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**STUDIES IN
BRITISH HISTORY AND POLITICS**

STUDIES IN BRITISH HISTORY AND POLITICS

BY

D. P. HEATLEY

LECTURER IN HISTORY

IN THE UNIVERSITY OF EDINBURGH

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TO
MY MOTHER

P R E F A C E

IN the first study in this volume an attempt is made to expound, compare and estimate the reasoning of three well-known men on the problem of Church and State. Their views, and especially the several points of view, have significance from the seventeenth century to the twentieth in the interaction of religion and politics in Britain.

‘An American-Independence Group’ is, in part, a by-product of an interest which I have taken in the study of the American Question for many years, but it is also a consideration of fundamentals in the politics and statesmanship of Independence. Distinction is drawn between attachment to a constitutional principle and the claims of a political and national ideal for one people. The constitutionality that was threatened prevailed: the larger loyalty that demanded recognition was sacrificed: ‘in Congress, July 4, 1776,’ the less triumphed at the expense of the greater.

In this American study, as well as in two of the three which follow it, the politics are, I trust, politics drawn from history, and yet with due homage rendered to ‘the thinkers.’ In our own

day has come the rise of a new Britain, with a call for a new political expression ; and the hard problem has to be faced of effecting a harmony between the politics and the economics of this Britain, or, at the least, of obviating disaster from conflict between them. It may seem to-day, as it seemed to Tocqueville, that a new science of politics is required for a world of new conditions. Possibly that may be. But, even should a ' new ' political science be thought to be necessary, in spite of a wealth of wisdom and a flexibility of adaptation in the old, not without loss and dishonour and peril will the Britain of to-day and of to-morrow disregard the achievements of her past and especially the instruments, means and manner of her achieving in politics.

The study on Frederic William Maitland appeared in April 1907 in the *Juridical Review* ; I am indebted to the proprietors for permission to make it part of this book. The Notes appended to the study, which are meant to explain the many allusions to Maitland's work and to that of others, have been written for the volume now published. There are portions, technical and substantial, of Maitland's subjects on which I have no title to say a word, and my own independent research and study have been more in modern than in medieval history ; but for many years I have been in debt to him, and the way in which the tribute of a

stranger was accepted by one or two whose privilege it was to know him personally and who are qualified to appreciate his contribution to historical learning and literature, has encouraged me to republish what I ventured and was impelled to write about him shortly after he died.

The Appendix of Notes—some of them supplementary discussions—is considerable in proportion to the text. But their bulk might easily have been increased : I have, for example, withheld references to the many passages in Bacon's writings on which the summary exposition of his politics (on pages 13-14), as distinguishable from his views on the problem of Church and State, is directly founded. Some of the Notes and discussions—such as those on the 'glittering generalities' of the Declaration of Independence, on a standard for interpretation of the Great Charter, and on 'King' and 'Crown' in British history—will, I hope, have value even apart from their relation to the text.

D. P. H.

EDINBURGH, *March* 1913.

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BACON, MILTON, LAUD : THREE POINTS OF VIEW

‘For I see & perceave, that the master Builders of our Church in repairing of it again were so wholly bent unto the doctrine, that they never thought of Discipline : and so reteined it stil almost wholly such as it was amongst the Papistes. whereupon it commeth that all the government of our Church is not taken out of God his worde, but out of the Canon lawe and decrees of Popes. which, wither it were done by reason of the ignorance of those daies, or of negligence, or for ambition and vaine glorie, or because they thought that popish Discipline might be tollerated for a time, or for what purpose soever : surely no man can doubt, but that it was to the great hinderance and discommoditie of the Church, which knoweth it throughlie, and which diligentlie considereth, how small fruite hath growen of so long travaile and labour in the preaching of the gospell.’—*A Ful and Plaine Declaration of Ecclesiastical Discipline out of the Word of God, and of the declining of the Church of England from the same* (1580), pp. 15-16. [*Ecclesiasticae Disciplinae, et Anglicanae Ecclesiae ab illa Aberrationis, Plena è verbo Dei, & dilucida explicatio* (1574), p. 12.]

‘Is their question either concerning the regiment of the Church in general, or about conformity between one church and another, or of ceremonies, offices, powers, jurisdictions in our own church ?

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Of all these things they judge by that rule which they frame to themselves with some show of probability, and what seemeth in that sort convenient, the same they think themselves bound to practise ; the same they labour mightily to uphold ; whatsoever any law of man to the contrary hath determined they weigh it not. Thus by following the law of private reason, where the law of public should take place, they breed discontent.'—HOOKER, *Ecclesiastical Polity*, book I. c. 16.

'Touching our conformity with the Church of Rome, as also of the difference between some Reformed Churches and ours . . . To say, that in nothing they may be followed which are of the Church of Rome, were violent and extreme. Some things they do, in that they are men, in that they are wise men, and Christian men some things, some things in that they are men misled and blinded with error. As far as they follow Reason and Truth, we fear not to tread the self-same steps wherein they have gone, and to be their followers. Where Rome keepeth that which is ancients and better, others whom we much more affect leaving it for newer and changing it for worse, we had rather follow the perfections of those whom we like not, than in defects resemble them whom we love.'—*Op. cit.*, book v. c. 28.

'The body and substance of religion (as is said) is enjoined and determined in Scripture, which must not be altered. Whatsoever is not determined there (and the circumstances formalities and ceremonies which are to be used in the exercise of religion and the more decent worship of God are not prescribed and directed by the Scriptures) must therefore be provided for and enjoined by that authority which is entrusted with the government of that dominion and people where the same is to be exercised ; and in which the nature and humour of the people, the custom and disposition of the time, have been always and may

always lawfully be considered and indulged to. . . . Things that were of themselves indifferent cease to be indifferent, and become necessary, when they are by lawful authority commanded to be practised ; and kings are as well obliged to exact obedience to the latter, as to take care that there be no invasion of the former.’
 —CLARENDON, *Religion and Policy* (edn. 1811), I. pp. 3, 5.

IN the Middle Age it was a fundamental conception, and for a time the ideal, that there is a unity of mankind in Christian communities—the concord of the Christian commonwealth.¹ The medieval Church endeavoured to make the secular power subservient to herself in furthering this ideal. The Church was the divinely appointed instrument for safeguarding and advancing the higher life of men : other agencies can be but contributory ; they might be powers for good, and even claim to be also commissioned by God, but, in relation to this impelling motive and supreme object, they should be loyal subordinates of the Church. Only in the Church was found the real community of men. St. Augustine, Hildebrand, Aquinas mark epochs in historical conflict, but do not stand for essential changes in development of the ideal, or in deviations from it. This ideal impressed the minds of men, and moved them to action, even when it was utterly impracticable. Although impracticable, it was for many and for long an incentive. It provided the Middle Age with its chief element of grandeur. It gave to the Middle

Age an ethical note more distinct than is present in the Modern.

The explanation of why and how that ideal failed—the consideration of how far the Church gained and what it lost through its seemingly expedient and even indispensable organisation of interests and of powers, many of which were not in themselves spiritual ; how far it acquired and with what dangers it applied the attributes of the ‘earthly state’—this rivalry of *Sacerdotium* and *Imperium* makes up a large portion of medieval history, and gives to that history sequence and vitality. The course of the struggle pressed upon thinkers and upon the men of affairs, ecclesiastical and temporal, the determination of boundaries in jurisdiction, of the relation of parts in the disposition and government of a community, the question of sovereignty and not merely of superiority. From this struggle of the Middle Age there came a large and fruitful legacy in political thought to the Modern. But the ideal round which this political thought had been nurtured was crushed before the close of the Middle Age—before the failure of constitutional attempts at reform within the Church led to the onset of the Reformation.

The basis of the Church in England before the Reformation was comprehensive, in the sense that the Church was the full community of Christian men : protests of reformers did not issue in effective

secession and in separate, self-supporting organisation. While thus comprehensive, the basis was not, in the later sense, a State basis. In some respects the Church had been independent of the State (or the secular authority) and superior to it : on the most severe State view, it was semi-independent of the State. In other words, the Church was the Church Catholic in England, and it was also the Church of England—*Anglicana Ecclesia*. It held a dual position, and much of the intensity and historical significance of the struggles between temporal power and spiritual power in England since the Norman Conquest and the Hildebrandine movement had resulted from this dual capacity—this dual relationship—of the Church. The new basis, in comparison, at least, with the old one, was a State basis ;² in some ways that was a gain. On the other hand, the basis and the Church as thus recognised could not be comprehensive, as of old ; and that was in itself a great loss and the source of great dangers—dangers, as the event proved, greater even to the State and to the prestige and security of the kingship than to the Church and the religious life of the community. Owing to the continued vitality of the rejected dogma and worship within England and the weight of Rome's influence from without, and, at the other extreme, owing to the principle or profession of individual judgment and the methods of inquiry and innovation on which

the reformers rested, making, therefore, for fresh advance or change, the new basis of 'the Church'—the basis of any organised, defined Church—could not acquire national comprehensiveness.

In short, the Church of the State could not be a fully accepted Church of the nation. It is by reference to this fundamental that we must think of Hooker and Lord Burleigh, of Laud and Charles I. and Strafford, of Milton and Cromwell. It is only when we keep this formula before us that we can appreciate the trials of Churchmen and of statesmen, as well as the designs and aspirations of the critics of both, in the second half of the sixteenth century and during almost the whole of the seventeenth ; and, as it was inherent in the Reformation, the formula is still valid and significant to-day for Anglican and for Nonconformist, for Church and for State. The Church could not comprehend all the members of the Church of Christ : the State could not comprehend—it could not control—the nation. The old ideal—that all should be *in unitate concordiae*—had gone in respect of those things that pertain to the Church ; and the State was face to face with the very serious problem, how far was it justified in initiating and carrying through measures of coercion and severity for securing the conformity of its own 'subjects' with that one Church which the State—those in authority in the State—recognised and protected ; and, if justified, in whatsoever

degree, how far was it to the interest of the State—the Crown and the effective organisation of government—how far was it politically expedient, to endanger the loyalty of subjects in order to attain a uniformity, or a semblance of uniformity, among worshippers. ‘*Mihi tamen placet disputatio Bodini, ut vi non sit utendum contra subditos qui aliam amplexentur religionem. Sed semper sub hac exceptione sic dico, “Nisi quid detrimenti illinc res publica capiat.”*’³ Principles of toleration, before ‘the age of toleration’ had come, had to be applied within the economy of State-right and State-power. The Reformation, through the political thought and the political practice which resulted from it, helped to develop the conception of sovereignty, and to harden it as the central principle for the State. Not always in opposition to this principle—at times without deference to it—but always with recognition of the principle as embodied in the instruments of rule, the claims of believers had to be translated into the secured rights of conscience; this security of rights to individuals had to be achieved without disintegrating the State. How to define and yet be as little exclusive and coercive as possible; how far to admit liberty of opinion and rights of conscience; how duly to constitute a Church as ‘the Church of England’ and of Englishmen, were problems vitally affecting the constitution and rights and powers of the State. The State of

the Tudors, as the State of the Commonweal, had been framed as the gathering-in of the civic dispositions and the material resources of Englishmen under the sovereign, and it rested, for its strength, on the conformity of subjects: was it possible for the Church—for any defined Church after the Reformation—to be, and to continue to be, the gathering-in of the religious dispositions and spiritual resources of Englishmen under the sovereign, and to rest on the conformity of believers?

Three points of view on this problem are presented in the attitude of Bacon, of Milton, and of Laud.

In the Cecil Manuscripts there is a paper of the year 1564 which sets forth in conspectus 'varieties in the services of the Church of the Precisians,'⁴ in respect of Service and Prayer, the position of the Table, the administration of the Communion, and Baptism. For example, as to the administration of the Communion, we are told that some officiate 'with surplice and copes, some with surplice alone, others with none: some with chalice, some with a communion cup, others with a common cup: some with unleavened bread, some with leavened. Some receive kneeling, others standing, others sitting.' Such were the rudiments of the controversy—still within 'the Church'—known as the vestiarian controversy. If we combine this statement of

varieties in service with the Puritan demands in Convocation in 1563, not only have we the immediate cause of Archbishop Parker's Advertisements and Articles of 1566, but we see that many of the troubles of Laud were troubles also to Parker.

This diversity within a Church which ought to have been at one, it was thought, both for her own sake and for the sake of strength against Rome, brought disquietude to a political mind like Cecil's, and to leaders of the Church of different dispositions like Grindal, Whitgift and Bancroft.

But this initial phase of the controversy, distinctively concerning externals and symbols, was soon merged in the real and vital struggle of Church government; inevitably it was thus merged, were it merely with a view to commanding the means of victory in the initial points of contention. This vital struggle had been entered upon, with full consciousness of its significance, just about the time of the birth of William Laud in 1573. In 1572, in the 'Admonition to the Parliament,' which had its ablest advocate in Thomas Cartwright—the 'T. C.' of the controversy with Hooker—it is pertinently and forcibly asserted that the contentions are 'not for a cap, a tippet, or a surplice, but for great matters concerning a true ministry and regiment of the Church, according to the Word, which things once established the others melt away of themselves.'⁵ In this same year there was organised at Wandsworth

the first English presbytery. Two years later was published the work on *Ecclesiastical Discipline* by Walter Travers—a book of vast and unsurpassed influence on the Church dispute till the close of the Puritan era : by reason of his stately diction and his sanity and restraint Hooker is now revered by many to whom Travers is wholly unknown, but in relation to the essentials of this controversy each was worthy of the other, and each was worthy of being an incentive to his hearers, when, at services on the same day at the Temple, one of them gave ‘ pure Canterbury,’ and the other, sturdy ‘ Geneva.’⁶ If, said Hooker, you ask of such men why they conform not themselves unto the order of the Church, they will answer, ‘ We find no such thing commanded in the Word ’ ; and it was clear that the ‘ discipline ’ which they would set up—a discipline within a discipline, as Fuller said later—would be an effective presbytery within a titular and nominal episcopacy, which in time would be dispensed with altogether. In addition, there were Separatists, Brownists, Barrowists, advocates of ‘ Reformation without tarrying,’ upholders of the sufficiency of a faithful and holy company gathered in the name of Christ, in need of no civil magistrate for the things of the spirit, of no State protection and ties—the fore-runners of an influential body of men in the history of England and of the American colonies, in the interaction of religion and politics. These discus-

sions caused as much concern to the State as to the leaders of the Church, for the Puritan disposition was a growing one in England, and its growth was reflected in Parliament. In 1593 an Act, due to the executive, was passed against 'seditious secretaries.' In the same year was published Archbishop Bancroft's book—a useful work of retrospect and on policy—*Dangerous Positions and Proceedings . . . under Pretence of Reformation and for the Presbyterial Discipline*.⁷ In this year, also, Hooker's great work on *Ecclesiastical Polity* (the first four books) was entered at Stationers' Hall. Laud, at the age of twenty, then became a Fellow of St. John's College, Oxford ; and Bacon, at the age of thirty-two, denied the support of the Cecils, was disappointed in his hope of becoming Attorney-General. The controversies, whose origins and essentials have been briefly indicated, were further developed before Milton was born in 1608 ; and the course of development had imperilled both Church and State before Milton in 1641 issued his pamphlet, *Of Reformation touching Church Discipline in England*.

What have we ?

A Church problem, but also a State problem : a Church problem, but also a problem for members of Churches or of communities or mere aggregates of worshippers : a State problem, but also a problem for subjects of the State—for men who, although subjects, were members of a commonwealth, enjoying

rights of citizenship, exercising powers and ready to add power to power for the protection of their own interests and opinions, and even for the invasion of the interests and opinions of others : this, at a time when the prevailing temper in matters of religion was for uniformity—not for liberal-mindedness, for discipline—not for toleration.

We have to disclose three points of view, taken by three men of different upbringing, different associations, intellect and character, on a problem on which, from conditions and facts, there could not, at least, be only one view ; and we shall find that the particular view of each of the three was a view appropriate to him and pertinent to his general outlook and to his standards in life. It is this particular view within a general view in the case of each that especially demands consideration.

The mind of Francis Bacon presents a difficulty : his mind, like his life, is almost uniquely composite. Bacon the thinker is checked by Bacon the politician, the politician by the lawyer and judge, and the politician and professional lawyer are shaped by the courtier, by the man of the world, by the man who has to stoop to petty devices, degrading his greatness by thoughts and acts of meanness, in order to assert and maintain a position to which his consummate powers would of themselves have entitled him, without ignoble sacrifice of right, amid conditions less sordid and less adverse.

Like Machiavelli, Bacon took a hard estimate of human nature : he finds in man more of the fool than of the wise : he insists on knowing what men really do—not merely what they ought to do : we owe thanks to Machiavelli for that lesson.⁸ He is an apologist for State necessity, for ‘reason of State’ : the State, for its own security and for essential national well-being, may have to apply and sternly impose measures that are not consistent with liberties of the people or of a section of them as liberties are at the time popularly or by a section conceived—measures even that may seem to be inconsistent with ethical principles. Bacon would have deemed it the highest commendation if it were allowed to him—as it may be—that he tried to view men and things as they are : he tried to face the facts.

Prerogative should protect, not frustrate, the rights of subjects : it is not in opposition to the common law : the common law should by it be supplemented and perfected. Let the kingship be national, for such is its function and its justification. Headship, unity, responsibility there must be in the State. But there are diversities and conflicts : let the kingship mediate. Let Parliament be permitted freely to exercise its expressive function : let it voice the wants of the nation. Let the king and his ministers give ear—give heed—to this voice : let rule be rule with full knowledge.

Let us revise our laws from time to time in view of a change of conditions : let us have a care of our administration. Perfervid zeal in law-making—a superabundance of laws—let us not countenance : the more laws we make, do we not lay the more snares to entrap ourselves ? ⁹ Still, let rule be broad-based on an understanding of needs and of whims, of what is straight and of what is crooked. Taxes and steady and substantial revenue are indispensable for the maintenance of the State and for the sinews of war ; and England has of late grown marvellously in riches. It may be that the pride of the Spaniard is too overweening, for the tops of his Empire are too heavy for its roots. Yet England cannot live to herself alone : she cannot stand in isolation ; and command of the sea may give to her the mastery of Empire and the control of vast wealth. For herself, therefore, and for her place among the nations a liberal revenue must be assured to Crown and State : yet, let not the king by haggling with his commons in Parliament seem as merchant rather than king toward his people : let the king be worthy of the kingship of England.

The politics of Bacon, like his nature, were composite, and, where conditions and facts were changing and producing a tyranny of circumstance, his politics could not, in things both great and small, wear for long the aspect of consistency. But in essentials it was a wise policy, and in essentials it

was fearlessly uttered by him to James : it was a wiser policy than James was able to apply or to apprehend.

It would be going too far to say of Bacon, as was said of the *Politiques* by Tavannes, that he preferred the peace of the kingdom or of his own home to the salvation of his soul—that he would rather that the kingdom remained at peace without God than at war for Him. Still, Bacon was a *Politique* rather than Anglican or Puritan. Religion, with its organised Church and ecclesiastical interests, may not be merely an *instrumentum regni*, but the Church must not endanger the State : religion must not conflict with State policy so far as to undermine State security. But Bacon—the *Politique*—is a keen observer of conditions, with some tolerance of differences of thought and opinion and of their embodiment in practice. What does he profess and assert and hope for ?

The Church, like the State, has need of heads and rulers. The Church, even more than the State, should seek unity ; and there is a unity that is not based essentially on uniformity. The heads and rulers of the Church, like those in authority in the State, must not ignore thoughts and opinions that tend to differences. Bacon, in his general politics, is more with Bodin than with Bodin's ablest critic, Althusius : he is more an upholder of sovereignty in a State as unitary than an advocate of that efficacy

and benefit of complementary rights and capacities of the several associations, which, with their corresponding checks on the exercise of power, together constitute the State as in itself federal.¹⁰ Yet he makes concessions to the claim of a Church to an identity and self-developing life of its own: to a Church as the gathering-up of the spiritual activities and hopes of the vast majority of a people he would grant a large measure of right of self-development, unimpeded by the State or by the secular power. In a paper presented to James in 1603, 'at his first coming in,'—that one of his writings in which he probably best discloses his convictions and preferences so far as they were strongly held on a shifting and disturbing question—Bacon draws a parallel between Church government and civil government. God has 'left the like liberty to the Church government, as he hath done to the civil government, to be varied according to time and place and accidents, which nevertheless his high and divine providence doth order and dispose. For all civil governments are restrained from God unto the general grounds of justice and manners, but the policies and forms of them are left free. So that monarchies and kingdoms, senates and seignories, popular states or communalities, are all lawful, and where they are planted ought to be maintained inviolate. So likewise in Church matters, the substance of doctrine is immutable, and so are the

general rules of government, but for rites and ceremonies, and for the particular hierarchies, policies, and disciplines of the church, they be left at large. And therefore it is good we return unto the ancient bands of unity in the Church of God, which was *one faith, one baptism*, and not, *one hierarchy, one discipline*; and that we observe the league of Christians, as it is penned by our Saviour Christ; which is in substance of doctrine this, *He that is not with us is against us*; but in things indifferent and but of circumstance this, *He that is not against us, is with us.*¹¹ There is much in Bacon's *Essays* that is suggested by and is highly pertinent to the political conditions and problems of his times, and in writing on 'Unity in Religion' he was impelled to insist that 'they be two things, Unity and Uniformity,' and to utter warning against 'two false peaces or unities: the one, when the peace is grounded but upon an implicit ignorance; for all colours will agree in the dark: the other, when it is pieced up upon a direct admission of contraries in fundamental points; for truth and falsehood in such things are like the iron and clay in the toes of Nebuchadnezzar's image—they may cleave, but they will not incorporate.' 'We see the coat of our Saviour was entire without seam, and so is the doctrine of the scriptures in itself; but the garment of the church was of divers colours and yet not divided. We see the chaff may and ought to be

severed from the corn in the ear, but the tares may not be pulled up from the corn in the field. So it is a thing of great use well to define what, and of what latitude those points are, which do make men merely aliens and disincorporate from the Church of God': thus wrote Bacon in making 'as it were a small globe of the intellectual world'—in the making of his 'oblation' to James I., *Of the Proficiencie and Advancement of Learning, Divine and Human*.¹²

Bacon thought that civil knowledge or politics was the most difficult to reduce to axioms, but he gave the assurance that, while generalities are barren and the multiplicity of single or isolated facts only presents confusion, 'the middle principles alone are solid, orderly and fruitful.' Bacon, inquirer and *Politique*, sought *vera illa et media axiomata*. Bacon desiderated them for the Church also. But his bias was towards the ecclesiastical at the expense of the religious; and he viewed the ecclesiastical with the eyes of the State—of a State which he wished to be a harmony, at a time when it was the hardest problem of rule to equip and define the State as the State of a genuine commonwealth.

Bacon's point of view led him to two practical injunctions: first, he was so far with the Puritans of his day that he was in favour of curtailing the powers of the bishops, of increasing the powers of Convocation, and of restoring 'prophesyings' as training-grounds for preachers; and second, like

Hooker and like Laud, he held that the Puritans were wrong—that they did a wrong—in fixing on the Church of Rome as a standard by which to judge what they deemed excesses and errors in doctrine and worship in the Church of England : the Church of England was thereby not being judged on its own merits.

Bacon was neither idealist nor mere opportunist, whether for the kingship or for Episcopacy, for State or for Church. Let the forms, ceremonies, dignity of kingship and of Church be upheld, but these are not the all-in-all : let the rulers in Church, as in State, rule in full knowledge of things as they are, and, as behoves men who should be observant and prudent, let them discriminate between the essential and the non-essential : goodwill there should be : concessions there must be : let work be efficient, service beneficent. It was a *via media* Bacon was pointing out in Church as in State—a development and adaptation of that middle way which had been preferred, but had never been securely defined and followed, in that reign of the sovereign whose achievements he glorified—a queen of whom it was said by a judge, who was reminded of his words by Bacon, that she must be thought of, not as ‘ a statute queen,’ but as ‘ a common-law queen.’¹³ It was a path more difficult still to see and to follow when Puritan was in league with Common Law under a king who enhanced and theorised on his prerogative and

laid down that only that is 'the true religion' which 'by myself is professed and by the law is established.'¹⁴ For the Church it was perilously inadequate as a foundation; and for Bacon, in the perversity of circumstance of his time, it could hardly be the path of expectation and of hope. By reason of the force of circumstances, both personal and external to himself, he came to oppose agitation instead of continuing in sympathy with criticism and being tolerant of differences: he took his stand, as a man of State affairs, for that which was 'determined and ordered'¹⁵ in religion by the authorities in the land. It is not to be charged against him as failure to discern or as evidence of dishonesty in mind and intention. And yet Bacon, prudent and practical as he wished to be, like many other men with a reputation for 'prudence,' did not allow enough for this, that, whereas a compromise on non-essentials, for expediency, can and does succeed, an attempt at compromise by surrender of principles—by ignoring essentials—is foredoomed to failure, even more disastrously in religion than in politics.

It is just at this critical point that Milton confronts Bacon. The mind of Milton—his outlook—is not more comprehensive than that of Bacon—than that of him who took all knowledge for his province. But he is more distinctively the thinker than Bacon. Like Dante he responded to the call for service to the State: he silenced his Muse to serve his country.

But he is much less than Bacon a man of State affairs. His habit of mind was formed before he became immersed in the politics of his day. It was because he already felt strongly, from conviction, on the main question of his day—it was because freedom of thought¹⁶ and liberty of conscience, ‘God’s secretary,’ were vital to him—that the poet became for others pamphleteer, and entered the service of the State under Cromwell.

There is much in Milton’s prose writings that is not only impassioned, but bitter and extreme : it was an age of acute antagonisms and savage polemics. But he stands for the Independent at the highest and noblest point of Independency. His politics, in respect of the kingship of his time, were extreme : from the premiss that kingship is a trust he argued even to a defence and duty of tyrannicide,¹⁷ because freedom of conscience was impossible for him under the English kingship of his day. And yet Milton was an opponent as much of unfettered liberty in the nation as of unrestrained authority in the State. He did not advocate a democracy untempered. The people are ‘exorbitant and excessive in all their motions,’¹⁸ and there is ‘in number little virtue, but by weight and measure wisdom working all things.’¹⁹

‘Licence they mean when they cry liberty ;
For who loves that must first be wise and good.’²⁰

‘Nor is there any sociable perfection in this life civil

or sacred that can be above discipline, but she is that which with her musical cords preserves and holds all the parts thereof together ' ²¹—a tribute by Milton hardly less lofty than Hooker's 'celebrated sentence' on law at the close of the first book of his *Ecclesiastical Polity*, although it is harder in the case of Milton than in the case of Hooker, of Bacon, or of Burke to weave such a tribute into the general texture of his politics; and with Hooker it was made a plea for a well-ordered episcopacy.

In the spiritual sphere men cannot be forced. Let truth and error grapple; the issue will be good. Milton has faith in the triumph of the truth. For him no State consideration was involved. The State should not interfere. The freedom sought was a freedom beyond the sphere of the State. Therefore, he was as much opposed to a Presbyterian discipline as to the Laudian régime. After the triumph over Charles I. and Laud, the Presbyterians of the Long Parliament were 'the new forcers of conscience':

'Men, whose life, learning, faith and pure intent
 Would have been held in high esteem by Paul,
 Must now be named and printed heretics
 By shallow Edwards and Scotch What-d' ye-call.

New *presbyter* is but old *priest* writ large.' ²²

Milton besought the Presbyterians 'not to compel

unforcible things, in religion especially, which, if not voluntary, becomes a sin.' ²³ More than Hooker, since he is not, like Hooker, committed to a State Church, Milton looks from within. He lays stress on spirit and ideal more than on letter and organisation. There is no country so famous for firm, strong oaks as England, Jeremiah Burroughs in a sermon to the Lords remarked, with a view to adding : ' You will find English consciences to be so.'

Milton's ideal of Christian tolerance was not attained : in his age it was not attainable. But it has elements that proved enduring. ' These are the men cried out against for schismatics and sectaries, as if, while the Temple of the Lord was building—some cutting, some squaring the marble, others hewing the cedars—there should be a sort of irrational men who could not consider there must be many schisms and many dissections made in the quarry and in the timber ere the House of God can be built. And when every stone is laid artfully together, it cannot be united into a continuity—it can but be contiguous in this world : neither can every piece of the building be of one form : nay, rather, the perfection consists in this, that out of many moderate varieties and brotherly dissimilitudes, that are not vastly disproportional, arises the goodly and graceful symmetry that commends the whole pile and structure. Let us, therefore, be more considerate

builders, more wise in spiritual architecture, where great reformation is expected.' ²⁴

We have taken Milton out of his time, but not out of his place. The standpoint he adopted, the line of reasoning he pursued, consequences involved, were known to Laud. Milton held that there is a certain attraction—a magnetic force—between the religion and its ministerial form ; that if the religion be ' pure, spiritual, simple and lowly, as the Gospel most truly is, such must the face of the ministry be ' ; whereas, if the ministerial form ' be grounded in the worldly degrees of authority, honour, temporal jurisdiction, we see it with our own eyes it will turn the inward power and purity of the Gospel into the outward carnality of the law, evaporating and exhaling the internal worship into empty conformities and gay shows.' ²⁵ As for ' the long and hot contest,' whether Protestants should tolerate one another, if men would be but ' rational and not partial '—such was the plea of Hooker as appropriately as of Milton—it might be ended ' without need of more words to compose it.' But Popery is ' a double thing to deal with, and claims a twofold power, ecclesiastical and political, both usurped, and the one supporting the other.' ²⁶ The Church of Rome attaches men to a ' Roman principality ' rather than to a religion : if her adherents are not to be tolerated, it is ' for just reason of state more than of religion.' ²⁷

The situation was fully formed, and had to be faced by Laud, before Milton abandoned, for a time, poetry for politics.

History tells of forces and movements, not merely of facts and events. In reviewing the past we have to appreciate movement of mind, the translation of mind into action, the imperfections in all such translation, the clash between mind and deed, between what is desired and what is made manifest and actual, the resulting protest and, it may be, consequent revolution. There are conditions and times when a stand must be made against the onset of these forces of protest, if the threatened institution—if that which is established and is being assailed—is not to lose its identity and, it is possible, perish utterly. Such are the crises of history. It was at one of these crises that Strafford made his stand for 'the monarchy'—or a monarchy, and Laud for 'the Church'—or a Church. Strafford and Laud, as their intimate correspondence sufficiently reveals, were fellow-workers, and not for Charles merely, but in a policy and for a principle—the policy of order with a view to solidarity and strength, the principle of authority against an overweening temper, an overstrained liberty. Strafford and Laud are notable as administrators rather than great in statesmanship. Each had the defects of his qualities: theirs were rather the imaginings that spring from fear for what has been, than the imagination that

goes forth with hopefulness to what may be. But it is not merely ungenerous—it is shallow and superfluous—to try to explain the policy of either of them by considerations mainly of a personal kind—by personal ambition and deference to the king on the part of Strafford, by a personal—a personally and keenly felt—antipathy to the Puritans, as men and as Englishmen, on the part of Laud. A stand had to be made for the Church of England—for a Church of England as a great central Church for Englishmen, preserving historic continuity, linking the past with the present.

A constitution for a State reflects the manner of life chosen, accepted or permitted by the nation in social relations. It determines frontiers between sovereignty and subjection, between authority and liberty (or liberties); and laws, framed, developed and applied within such constitution, are particular devices in loyalty to the same general end. Our elliptical expression is apt to mislead, or to lead us either too far or not far enough: ‘the constitution’ is the constitution of government: ‘the State’ is the State of the commonwealth. It is not otherwise with the constitution and the laws of churches. Looking back, we can see that the differences in doctrine, in discipline, and even in mental tone were too wide in Laud’s day for incorporation and adjustment within a Church—within any defined Church of thinkers and believers, with a constitution of its

own, a constitution enjoining standards and imposing precepts, a constitution distinctive, to which the loyalty of members of the Church could go out ; which men could look to as a possession—as their own. This is the justification—the measure of justification—of Laud's assertion : ' Unity cannot long remain in the Church where uniformity is shut out at the Church door.' That also is the justification—the measure of justification—for those who claim for Laud (as though he were Hooker in practical Churchmanship), that he saved the Church of England.

The ground of defence is not slender, but it is not secure. No decisive action is conceivable, amid the conditions that Laud had to face and did face, for which the defence could be secure. The spirit of unity was being sought through the letter : it was the mere letter that could have been imposed on the many who were unwilling. The atmosphere, moreover, was full of suspicions in Church and in State : questions were not looked at in themselves, and each contention was viewed in its worst light. Laud, as he frankly avowed at his trial, deemed Roman Catholics Christians, though not the best Christians, and deemed their Church a true Church, though not the truest Church ; and in the politics, strifes, asperities and fears of the time it was not unnatural for Presbyterians and Independents to charge him with tendencies to Romanism, while he

was merely striving, amid adverse conditions, for the advancement and security of the Church in England as a catholic church of Englishmen. When Presbyterian and Independent thought of the outward action taken and of the Romanist peril at court owing to the queen, they readily construed Anglicanism as sympathetic more with Rome than with the Reformation. It was hard at the time to be an Anglo-Catholic—hard for one to define himself and defend himself.

The immediate future furnished a similar measure of justification of Laud, and of condemnation. Presbytery failed to be comprehensive of Protestants or of non-Romanist Christians : it failed worse than the Episcopacy and Anglicanism of Laud. Independency under Cromwell was recoiled from and attacked both by Episcopacy and by Presbytery : its promise of toleration and of concord was not fulfilled. The Restoration of 1660 was a restoration much more of the Church of England—of the Church of Laud—than a restoration of either the monarchy or of the Parliamentarians. To that extent the Restoration justified Laud : so far as it was the triumph of a defined Episcopal Church, it justified Laud. But with the gladness of this Church restored must be taken the gloom of clergy dispossessed—the tragedy of England's St. Bartholomew's Day, 24th August 1662. So far, therefore, as Laud strove for comprehension of Englishmen within his defined

Church, his policy—his endeavour—was to a striking extent a failure. He failed where success was impossible : it was not possible at once to define and to comprehend. He did not fail where failure would have involved disaster—loss of continuity, loss of identity—to the Church as an historic Church of England.

AN AMERICAN-INDEPENDENCE GROUP

‘ If we promote scholarships for Americans in our Universities ; give posts and benefits in America, to such Americans who have studied here, preferably to others: if the Government permits such youth as come to Europe, on account of their studies, to come over in the King’s ships *gratis*, we shall still unite them more firmly. The Americans, by uniting with our own youth, at the University, will diffuse a spirit of enquiry after America and its affairs ; they will cement friendships on both sides, which will be of more lasting benefits to both countries, than all the armies that Britain can send thither.’

THESE words of a well-meaning Rhodesian before Rhodes come from a pamphlet¹ published in London in the year of the Stamp Act.

The author, John Fothergill, had been a distinguished medical student at the University of Edinburgh. He took part, with two or three others, in the ‘ humble and fortuitous ’ beginnings of the Edinburgh Medical (later, the Royal Medical) Society. He graduated in 1736—the year before the Society was formally instituted. He was the first Edinburgh graduate to be admitted a Licentiate of the College of Physicians, and for many years was well known in the cultured community of the London of his

day. Fothergill was somewhat disputatious ; but Benjamin Franklin placed him ' among the best men ' he had known.²

The opening sentences of Fothergill's pamphlet are in their impressiveness worthy almost of Thomas Pownall, whose able work, *The Administration of the Colonies* (Part I.),³ had been published, like the more influential work of James Otis,⁴ in the year before the Stamp Act was passed. ' The affairs of North America,' writes Fothergill at this critical time, ' are of so much importance to this kingdom, that I make no apology for offering a few thoughts on this subject, for the consideration of the public. For whether we look at the well-being and content of near two million of English subjects, on that continent, descended from and inseparably connected with ourselves ; or weigh the effects which their discontent and unhappiness must unavoidably produce on this country, scarce a more important object can present itself to an Englishman.' Not even the Puritan struggle in England called forth abler and nobler political thought than this American problem ; and, where the standard is so high, Fothergill's pamphlet does not rank with either the ablest or the noblest. But it is a well-informed statement and an earnest warning. In its discussion of commercial restrictions, of the impolicy of the Stamp Bill, and of the liberties due to colonists as Britons under the protection of the British Crown,

it does not substantially differ from the ordinary way in which contemporary writers and speakers presented the case against the Home Government. In at least three of its 'considerations,' however, the pamphlet has some claim to distinction. Not only did it reject as absurd the contention that the colonists, like the many non-electors in Britain, were 'virtually' represented in the British Parliament, but it argued that the prevailing corruption in British parliamentary life, and the difficulty of colonial members in a British Parliament keeping in touch with their constituents at a distance, were cogent reasons why the colonists should not send representatives to the Parliament sitting at Westminster.⁵ Secondly, it distinguished between the omni-competence or power and the right, or the expediency of exercising the rights, of the British Parliament: 'a British Parliament has certainly *power* to do many things which they have no *right* to do.'⁶ Thirdly, it uttered a much-needed plea for better and more widely diffused information about the colonies: it lamented the ignorance of the geography and the history of the colonies 'not among the vulgar only' in Britain—an ignorance 'the more inexcusable,' as there were 'not wanting many useful treatises upon these subjects.'⁷ Fothergill thus insisted that there should be knowledge before action, and that in action there should be caution and sympathy. In admitting so much

we are conceding that his work, viewed in its time and circumstances, is a work of political merit.

Fothergill espoused that cause of the Americans which is said to have prevailed. But we must discriminate. The American cause became a contention ; the ideal became, or took the form of, an interest ; the interest required an organisation ; and the organisation became militant for its own separate and separatist objects. The true American ' cause ' was a cause of constitutionalism, but of constitutionalism for Britons in North America, to be defined or made acceptable within the still undefined constitutionalism of one British people : it was a constitutionalism then, as it still is to-day, perhaps indefinable or better left undefined, for it owes even more to the spirit than to the letter. The rights and inheritance of Britons at common law and in political liberties were the paramount sovereign to which loyalty was due, and to that sovereign the tribute of respect and affection was paid by the protagonists for the colonies in the years immediately succeeding the passing of the Stamp Act. But political ideal, founded in attachment to a political heritage and issuing in high political hope for a politically gifted people, is greater than a constitutionalism : it is an ideal to which constitutionalists owe diligent and faithful service—the fealty due of right to a superior, and due especially by those who are professedly righteous : it is as

'the general will' to 'the will of all.' For there is a constitutional righteousness, correct, cold and unbending, that may not be politically saving. The true constitutional ideal of 1765, then upheld by many, was an ideal at war both with an indefinite prerogativism and with a presuming parliamentarianism in Britain, and yet in service to the political ideal for Britons; but the achievement of 1776—an achievement resulting from the errors and deeds of folly of the Home Government as much as from the efforts and deserts of Anglo-American constitutionalists—was an achievement for an American constitutionalism divorced from the political ideal cherished by Britons for one British people. It was the being faithful to this ideal—this political heritage and hope—in spite of the strain of unwise and inconsiderate conduct on the part of the Home Government, its natural and constituted guardian, that separated those Loyalists in America whose voice had been for constitutional definition and restraint from those colonial constitutionalists who came to think that they could secure constitutionalism for Americans only by men themselves become American, in independence of Britain.

The struggle in argument and policy was a very hard one, and, even as late as 1776, a very close one, in America, between Independence and Loyalism. Historical writers, in deference to the claims of a search for Truth, no longer read Destiny into facts,

and yet too often they bind themselves as by a chain to 'the result,' holding fast to 'the result' as to that which is established and safe; and 'the result,' it has been said, especially where a revolution is effected, 'usually becomes intermingled with our judgment of the principles of right in question, although the former is always uncertain in fact, whereas the latter are always certain in themselves.' ⁸ The American Revolution took place and was 'successful': its 'origins' have to be discovered; and thus economic forces, political opportunities (added to after the ousting of the French as rulers from Canada), constitutional necessities, mental habits, and even dim anticipations and prophetic utterances, are marshalled in imposing array to constitute, historically, a new 'situation' and to make up a 'general cause,' and thus compel the conclusion that separation was 'inevitable.' But any one who brings himself into the heart of this struggle, as it is revealed in thought, word and deed during the years that are of consequence in considering the crisis—those between the passing of the Stamp Act and the skirmish at Lexington—comes to realise the danger of magnifying the explanatory force of the 'general cause' and of tendency in history, and, while he sees the bitter fruit of the impolicy that was persevered in, he also makes allowance for the saving qualities of a statesmanship that was invoked but was withheld. The force of

the argument, indeed, from the 'general cause' is with those who deny that the colonies were ripe, or were ripening, for a separate and independent United State; and historians are not concerned, essentially or appropriately, with what might have been, or would probably have come, at a later time, and, it may be, without pressure, amid other circumstances and dispositions than those which have to be measured and reasoned from by them.

There are several powerful and almost determining considerations against the conclusion of inevitableness. (1) When, before 1775, colonists spoke and wrote of 'independence,' what they meant was independence of the Parliament sitting at Westminster—a limit, at least, to its assumption of omnicompetence, and power to their own Assemblies in a sphere marked out as their own under the Crown accepted by all Britons. We can see that the attitude was constitutionally an unstable one—that it was an attitude difficult to maintain owing to the differences between the traditional forms and the conquering realities of the constitution. The Crown was, normally, no longer in itself a political power: even its mediating function could be exercised only with the support and by the goodwill of the Houses of Parliament: since the Revolution, the Crown had come more and more to be controlled by Parliament, and by party and majorities, with the interests of England the dominant interests. It was

this constitutional situation that, taken with its political and practical bearings, had been sufficient to make the union of the Scottish Parliament with the English politically expedient for the Scottish people in 1707: the Crown and supreme executive, common to England and Scotland, were a Crown and executive subject to control by the stronger and more present law-making and money-granting body, and it seemed that Scottish rights and interests would be less ineffectually safeguarded by the presence and proportionate power of Scottish representatives in a British Parliament, possessing means of controlling the executive, than by these representatives possessing in a Scottish Parliament even a monopoly of a power, which was becoming more and more shadowy whenever the interests of Scotsmen required pressure to be put upon the executive-in-chief against the claims of Englishmen. At first, and for some years, there were colonists who advocated colonial representation in the Parliament in Britain. Gradually, that ground was abandoned by men of note and influence, except by a few. Even, however, with the power of the Parliament at Westminster over the Crown accepted, in spite of George III.'s belated aspirations, as a constitutional necessity, the sequel of the relations between mother-country and colonies after 1783 is adequate testimony that the problem was not constitutionally insoluble: the Crown, even as a symbol

only, could have been politically powerful in binding and maintaining where language and a heritage in ideas, the weight both of national sentiment and of cherished securities, all predisposed men in favour of association and in the direction of partnership.

Even before the outbreak of the Seven Years' War some readjustment of relations was seen by many to be desirable and expedient. It was only through apathy, neglect and lack of foresight in statesmanship, that an American question became the American Question of history. With a course of impolicy embarked upon by the Home Government, and amid the suspicions that were active between 1765 and 1775, it would have been difficult for those to whom the impolicy and much of the suspicion were due to formulate a scheme which should draw to itself the confidence and the respect of those whom it was to affect. But what was mainly sought and required was the token of sincerity and trust—some mark of an acceptance of the Britons of the colonies into a partnership with the Britons of the mother-country; and in both Britain and America there was sufficient political talent to devise a scheme that had no need to be definitive and could not have been final.

(2) There was time for British statesmanship to reveal itself and intervene. Ten years of a war of words and measures preceded the outbreak of the war against Nature. During these ten years little

was done by ministers at home to view the American Question as a question affecting Americans : the mind of those in authority in Britain was seldom thrown in impartial scrutiny across the Atlantic : even rudimentary sympathy and imagination were not brought into play.

(3) Pre-eminently it was a question in which movement of mind had to be watched and reckoned with. The mind of colonists had to be transformed before the thought of war with their 'home'⁹ could be admitted by them, and before the word 'Independence' could be uttered. The pamphlet and the press lost the American colonies to Britain : but for them there could not have been this movement and transformation of mind. But it was through indiscreet utterances and impolitic acts that the opportunity came to the pamphlet and press of the Opposition, to its organisers and to propagandists.

(4) 'During the course of my life,' wrote Jay, 'and until the second petition of Congress in 1775, I never did hear any American of any class, or any description, express a wish for the independence of the colonies.'¹⁰ In spite of the years of agitation and conflict, and notwithstanding the activity and success of Samuel Adams and his fellow-workers in organising opposition to the demands and contentions of the British Government, there was only a slender majority of colonists—if a majority at all—for Independence in 1776 ; and there seems almost

every ground for maintaining that at that time and for some time later a majority of the 'influential characters' (to use John Adams's expression) were against it. Many of these had a constitutional theory or principle—a reasoned-out ground of liberty and authority—to support their preference. For many political ideal transcended constitutional theory, and excesses in colonial argument and conduct strengthened them in their attachment to a mother-country which (as some of them avowed) had suffered less from its critics than from its own official, though not representative, spokesmen and agents. United Empire Loyalism—the greater—which was professed and adhered to in unfavouring circumstances, was vanquished by an American constitutionalism and 'nationalism'—the less—which found and improved its opportunity.

The part taken in this struggle in America before the Fourth of July 1776 by men educated in the University of Edinburgh has not hitherto been investigated—has not, perhaps, been thought of—and cannot, either easily or exactly, be determined. But it is probable—it is not the most impossible of historically ventured probables—that, had an Edinburgh-trained Virginian, resident for some years in London, and the Edinburgh-trained men in America stood firm for the ideal of United Empire Loyalism, amid the trying conditions of 1766-76, Independence would

not in 1776 have gained the day : their influence could have been decisive.

One of the striking features of the life of the University of Edinburgh about the time when, during the Seven Years' War, the French and the British were fighting for mastery in North America, is the presence of medical students from the American colonies—not less striking than the presence of colonial students at the Inns of Court during the same period. In 1765, when Fothergill offered his 'few thoughts' without apology, out of thirteen medical graduates five were American : ¹¹ it was an exceptional proportion which may have had some response from Principal Robertson's ¹² historical sense of the fitness of things in that year of fatal miscalculation. Fothergill's academic imperialism cannot be justly tested : his conditions were unfulfilled : suspicion gained ground—a bad note in politics, and the worst, politically, among kinsmen. But it is possible to apply, partly, the test as a general one, subject to conditions, in the case of two colonial students who became men of some political distinction—Arthur Lee and Benjamin Rush ; and with the second of these we shall have to associate, in a great political deed, two Scotsmen who studied at Edinburgh and became Americans instead of continuing as Britons in North America.

Arthur Lee was a member of one of the most distinguished families of aristocratic and politically

gifted Virginia—a home of ‘fine fellows’ and some ‘furious Whigs.’ In 1754 the University of Edinburgh had conferred the honorary degree of Doctor of Laws on ‘Colonel Lee, Virginia.’¹³ ‘Light-Horse Harry’ was a cousin of Arthur Lee and the father of the great Confederate general, Robert Lee. Arthur Lee graduated in medicine in 1764. ‘He was an old companion of mine,’ wrote Boswell in 1776, ‘when he studied physic at Edinburgh.’¹⁴ Being of Eton as well as of Virginia, qualified in English law and in medicine, a colonial agent in London, and the *Junius Americanus* of contemporary writing, perhaps Arthur Lee, dignified and self-sustaining, was able to tolerate, if he was ever conscious or even worthy of, the Johnsonian ‘Too, too, too,’ in Mr. Dilly’s drawing-room and in the company of John Wilkes in the year of the Declaration of Independence.¹⁵

He became an active diplomatist for Independence-Americans, but had differences with his fellow-commissioners—Franklin and Silas Deane—at Paris.

‘When it became the high United States
To send their envoys to Versailles’ proud gates,
Were not three ministers produc’d at once?—
Delicious group—fanatic, deist, dunce?
And what if Lee, and what if Silas fell,
Or what if Franklin should go down to hell,
Why should we grieve?—the land, ’tis understood,
Can furnish hundreds equally as good.’¹⁶

Franklin (age: seventy-two; sturdy and confident)

resented the superior, 'very magisterial' airs of Arthur Lee (age : thirty-seven ; able, ambitious, and with the pride of the Virginian and of the Lees)—resented being 'schooled and documented' by Lee, as if he had been one of his 'domestics,' and told him, besides, that he was of a temper, 'jealous, suspicious, malignant and quarrelsome.'¹⁷ For Franklin has said that the 'disputatious turn,' which he himself had in his earlier years through reading his father's 'books of dispute about religion,' is a habit seldom found in people of good sense 'except lawyers, University men, and *men of all sorts that have been bred at Edinborough.*'¹⁸ If we emphasise these last words—by full context not a pleasantry—emphasise them inasmuch as they are a general calumny, of which Arthur Lee, lawyer and bred at the University of Edinburgh, may have been the effective origin, let us make an immediate addition : Benjamin Franklin (himself calumniated by George III. as 'that crafty American') was the recipient of the freedom of the city of Edinburgh, partly, according to the record, for his 'love to all mankind' ; while he did not receive an honorary degree from Arthur Lee's university,¹⁹ he inspired Principal Robertson to confer one on other Americans ;²⁰ and a little later the Principal came to have such political doubts regarding these, and such fears for the honour of the university, as were only in part allayed by an able and eminent ex-colonial governor²¹—B.A.

of Harvard and, on the day before the Fourth of July 1776, D.C.L. of Oxford—one who had been less violently interpreted by Franklin than was Franklin himself by the forcible and ‘wary’ Wedderburn. Still, the ‘three letters’ which, in spite of some efforts by Arthur Lee, were conferred, before Privy Councillors, on Benjamin Franklin at a personal climax in the course of the American Question, by Wedderburn, who had been ‘bred at Edinburgh,’ went a little beyond historical warrant, and were certainly contrary to academic propriety: ‘. . . he will henceforth esteem it a libel to be called a *man of letters* : *homo trium literarum*.’ For *Fur* French admirers substituted *Vir*.²²

Fifty-six members of an historic Congress signed the Declaration of Independence²³—some of them previously distinguished; all, by pen-stroke, famous thereafter. Two of them were elder brothers of Arthur Lee—one educated in America by a Scotsman; the other sent ‘home’ to a school in England. It was the latter—Richard Henry Lee, the ‘American Cicero’ of his day—who had the distinction of moving the resolution in Congress on the 7th of June 1776, ‘That these United Colonies are, and of right ought to be, free and independent states.’ To him instead of to Jefferson almost fell, and not without qualification would have fallen, the honour of drafting the terms of the Declaration of Independence. Jefferson’s own version, from

which came most of the 'glittering generalities' ²⁴ that a subsequent generation, with more political acumen than the historical sense, has charged against the Declaration as accepted and subscribed, Richard Henry Lee criticised as 'copied' too much from Locke.

Three past students of the University of Edinburgh were among the signers of the Declaration: the Universities of St. Andrews and Glasgow share in the education of one of the three, and to that extent have their loyalism impugned under this alien but supreme declaratory test. Three Cambridge students were among the new Patriots and Commonwealth men. There was none from Aberdeen; none, it seems, from Oxford.

The Edinburgh three, having found it necessary 'to dissolve the political bands' connecting them with the home of their families, their institutions and their liberties, may be made to do some compensatory service, perhaps, for their university—service more varied than may be claimed for the three from Cambridge: (1) The signatures of the Edinburgh three, as of the Cambridge three, are decorous signatures, not bold, with heavy, almost pedestrian, pressure, like that of Harvard-bred and Congress President John Hancock, who made his so that 'George the Third might read it without his spectacles'; (2) only one clergyman signed: he was a Scottish Presbyterian minister—a graduate

of Edinburgh ; (3) two men who were born in Scotland signed : they had both been students at Edinburgh ; (4) two of the Edinburgh three, like two of the Cambridge three, were fellow-signers for one colony : those of Edinburgh had Benjamin Franklin as an associate ; (5) disloyal to the better politics of Edinburgh, the three were loyal sons of a home of learning, for each gained university pre-eminence and became great through work achieved—one in divinity (though not exclusively), one in law, and one—the ‘ Sydenham of America ’—in medicine.

Benjamin Rush, for whom this title was claimed in his own day and to whom it has been accorded since, was an Arts graduate of Princeton before he came to Edinburgh to study medicine. He was a member of the Medical Society in 1766-67 (a Society of which he was made an honorary member by election in 1785), and he graduated in 1768. He was appointed in succession to several chairs in the medical department of the recently established College of Philadelphia (later, the University of Pennsylvania), which had Franklin as its chief promoter and William Smith (of the University of Aberdeen) as its first Provost. There, in the earliest medical college of America, all of Rush’s colleagues in 1769, except the clinical teacher in the hospital, were graduates of the University of Edinburgh : John Morgan : graduated in 1763 ; on 3rd May 1765 the first medical professor in America ; William

Shippen : graduated in 1761 ; professor, 1765 ;
Adam Kuhn : graduated in 1767 ; professor, 1768.

Benjamin Rush was eminent alike as practitioner, teacher, and writer. In character he was the most sterling of those from Edinburgh who signed the Declaration. In his politics he had the support of his Edinburgh-trained university colleagues. May it have been due partly to this—that, in the days when they were students, Scotsmen and Englishmen had spoken, as we know, of ‘our’ colonies, had thought themselves pieces of a sovereign over America (as Franklin averred to a notable citizen of Edinburgh),²⁵ and had not distinguished between a political or national Britain and the geographical expression ? Morgan (Director-General), Shippen (Chief Surgeon), Kuhn and Rush (Physician-General) were for a time the chief members of the medical staff of the Revolutionary army. Although interested, however, in great political issues, and known to the student of Paine’s *Common Sense*,²⁶ Rush had less political aptitude than either of the Scotsmen—the lawyer and the ecclesiastic—who had studied at Edinburgh.

One of these, indeed, James Wilson, stood in rank in his day—after rather than before 1776—with Alexander Hamilton and Madison for political knowledge. He was born near St. Andrews. At the University of Edinburgh he owed much to Hugh Blair. For his skill, however, and eminence in law

and the principles of government the three universities at which he was a student—those of St. Andrews, Glasgow and Edinburgh—must surrender claims to English authorities and to American instructors, and especially to John Dickinson, formerly a student at the Inns of Court, London, and one of the able thinkers and healthy influences on the American controversy. Wilson was said to be the ‘best-read’ lawyer in the important Constitutional Convention of 1787. In 1789 he was appointed by Washington one of the first judges of the Supreme Court of the United States. Next year he was made the first Professor of Law at Philadelphia (University of Pennsylvania); in his introductory lecture he commended the American character in the few and, he thought, sufficient words, that it was ‘eminently distinguished by the love of liberty and the love of law.’²⁷ A man whose traits and powers are thus revealed was not made to be an extremist on the issues raised between Britain and the colonies, especially if they were to be expressed in constitutional terms and prudently confined within political bounds. The able and bitter satirist for the Loyalists admitted his learning, his power of thought and his earnestness :

‘Was it thy fatal faith that led thee wrong?
 Yet hadst thou reason, and that reason strong;
 Judgment was thine and in no common share,
 That judgment cultur’d with assiduous care.’²⁸

Wilson had gone to America, as a young man of twenty-one, in the year of the Peace of Paris, when hopes for Britain were high, based upon great achievement. Life in a political atmosphere and his own training and bent of mind made him a political thinker and a politician. In a work²⁹ published in 1774 and intended to influence the deliberations of Congress, although begun by him without that intention, Wilson endeavoured to establish the position that allegiance to the Crown was compatible with repudiation of the legislative, as well as the tax-imposing, authority of the British Parliament over the colonists. He argued that, while 'in a large and comprehensive view' the interest of Britain and the interest of the colonies were undoubtedly the same, men are usually affected more by an inferior interest, if it is near to them, than by one that is superior, if it is distant; and 'it is not to be wondered at if they secure the former by measures which will forfeit the latter.' Not only was it impossible to guarantee that the members of a Parliament chosen by electors in Britain would attend to the interests of the colonists: they might even commend themselves to their constituents by their ingenuity in inventing schemes and advocating measures to serve the mother-country immediately at the expense of the colonies: 'to oppress' the colonists might become 'popular and reputable at home.' To the British Parliament,

moreover, no obedience was due. Lessons of loyalty to Parliament the colonists had never given to their children; but they had inculcated the warmest sentiments of loyalty to the sovereign—to the British Crown: the Crown was the general superintending and safeguarding authority for all Britons: ‘dependence’ on the Crown the colonists had recognised and accepted and wished to endure. ‘The connection and harmony between Great Britain and us, which it is her interest and ours mutually to cultivate, and on which her prosperity, as well as ours, so materially depends, will be better preserved by the operation of the legal prerogatives of the Crown, than by the exertion of an unlimited authority by parliament.’

In a speech ³⁰ at the Philadelphia Convention in January of the following year, Wilson tries to adhere to his main line of reasoning, and he has not wholly abandoned his political hopes. But he is less dispassionate than in his writing, and he is confronted with the constitutional difficulty of the position he had taken up. The personal king in Britain was not faithful to the duty of the political Crown: the ministers in Britain were ministers of a party—ministers for an interest, and that interest not comprehensive: measures of force—unjustified by right and unsupported by utility—had been sanctioned and pressed on by king as well as by ministers. Both the letter and the spirit of the British Constitu-

tion, it seemed to Wilson, were offended against by such measures as had been recently taken in the name of the Crown. The distinction on which he had insisted, as forcibly as *Junius*, between Parliament and Crown, and between ministers and king, a distinction 'wisely made by the constitution for the security of the Crown, could not be applied, because the Crown had unconstitutionally rendered the application of it impossible. What has been the consequence? The distinction between him and his ministers is lost: but they have not been raised to his situation: he has sunk to theirs.' They are firm and wise words; words firmer and wiser it would be hard to discover in all the vast record of the American controversy.

At the decisive Congress of 1776 Wilson did not think the people ripe for Independence, and yet, after gravely doubting, he voted for it—gave the determining vote for Franklin's colony.

Witherspoon, of New Jersey, had no doubts: the colonies, he said, were 'rotting' for want of Independence. The sentiment, if not also its forcible expression, is typical of the man.

John Witherspoon was born at the manse of Yester. Through his mother he was descended from John Knox. After his schooldays at Haddington he went to the University of Edinburgh, graduated in 1739 with Hugh Blair, and studied for the Church. Like William (afterwards Principal)

Robertson, he left his manse for a time at the 'Forty-Five, with martial ardour and from loyalist zeal, but with only some adventurous consequences.

In the ecclesiastical strife of the age in Scotland Witherspoon was perhaps as conspicuously against Moderatism as Robertson was for it. In 1768—exactly one hundred years before M^cCosh (of Witherspoon's own Scottish university)—he accepted the presidency of the College of New Jersey—Princeton : *Dei sub numine viget*. Benjamin Rush, then studying at Edinburgh, had been commissioned to aid in overcoming Witherspoon's first unwillingness to accept the invitation. Since its dimmed and troubled rise—partly, at least, in a log-house about twenty feet by twenty, resembling, said Whitefield after seeing it, the schools of the old prophets : partly from this heroic Log College³¹ of William Tennent, of the University of Edinburgh—Princeton, throughout its course, has drawn much from Edinburgh ; and American Independence owed much to the sixth president of the college, John Witherspoon. He readily became an American. Without being a disloyal son of his old university, he was a prudent, politic administrator for his own college. In an address and appeal to the inhabitants of Jamaica and the West India Islands on behalf of the college,³² he admitted, almost four years after he arrived in America, that ' any gentleman of fortune, who would give the last and highest

polish to a young man of promising parts, would do well to send him, after his principles are fixed, and his judgment a little matured, for a year or two, to some of the Universities of Great Britain,' and 'particularly in North Britain.' But there were reasons why an American education should be preferred. In 'the young seminaries in America,' in general, and in the College of New Jersey not least, the value of diligence was inculcated, that of mental discipline was never lost sight of, and the preservation of morals was held—even as by 'all virtuous and judicious parents'—a 'point of the last consequence.' The danger run by young men when they were sent over to a British university, especially if they were wealthy, had been 'often complained of,' and—Witherspoon himself says—the danger really did exist. For, were there not, 'in every considerable place in Great Britain, but especially the principal cities where the colleges are fixed, a constant succession and variety of intoxicating diversions, such as balls, concerts, plays, races, and others?' To those of tender years (Witherspoon himself was fourteen when he entered the University of Edinburgh as a student) such diversions were 'highly pernicious,' whereas at Princeton, New Jersey, teachers and pupils were in a small village, but a village 'upon the great post road, almost equally distant from New York and Philadelphia, so as to be a centre of intelligence,

and have an easy conveyance of everything necessary, and yet to be wholly free from the many temptations in every great city, both to the neglect of study and the practice of vice.' At the close of this well-rendered service for the college came a Proper Form of Donation by Will (of Chattels Personal ; of Real Estates) to the College of New Jersey.

This was the man of whom, when matured into the American politician, it was written as follows by Jonathan Odell, descendant of one of the Puritan founders of Massachusetts, graduate of New Jersey (before Witherspoon's presidency), physician and, after study in England, episcopal clergyman, inducted into his rectorship at Burlington, New Jersey, by the governor, William Franklin, the Oxford-trained, Loyalist son of Benjamin Franklin, as priest and missionary active and devoted, a politician and satirist resolute in his Loyalism :

'Scotland confess'd him sensible and shrewd,
Austere and rigid ; many thought him good ;
But turbulence of temper spoil'd the whole
And show'd the movements of his inmost soul :
Disclos'd machinery loses of its force ;
He felt the fact, and westward bent his course.

Princeton receiv'd him bright amidst his flaws,
And saw him labour in the good old cause ;
Saw him promote the meritorious work,
The hate of Kings, the glory of the Kirk.

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Known in the pulpit by seditious toils,
Grown into consequence by civil broils,
Three times he tried, and miserably fail'd,
To upset the laws—the fourth prevail'd.
Whether as tool he acted, or as guide,
Is yet in doubt ; his conscience must decide.
Meanwhile unhappy Jersey mourns her thrall,
Ordain'd by vilest of the vile to fall ;
To fall by Witherspoon—O name, the curse
Of sound religion, and disgrace of verse.
Member of Congress, we must hail him next ;
Come out of Babylon was now his text :
Fierce as the fiercest, foremost of the first,
He'd rail at Kings, with venom well-nigh burst.
Not uniformly grand—for some bye-end,
To dirtiest acts of treason he'd descend ;
I've known him seek the dungeon dark as night,
Imprison'd Tories to convert, or fright ;
Whilst to myself I've hummed, in dismal tune,
I'd rather be a dog than Witherspoon.
Be patient, reader—for the issue trust ;
His day will come—remember, Heaven is just.' ³³

At Princeton Witherspoon emphasised the direct duty of education to the State ; and he himself became an energetic politician - ecclesiastic. On the 17th of May 1776, six weeks before the 'political bands' were formally severed, Witherspoon preached a political sermon at Princeton : ³⁴ the occasion was 'the General Fast appointed by the Congress through the United Colonies' : he spoke of 'the Dominion of Providence over the Passions of Men.' It was the first time (he called his hearers

to witness), he had used the pulpit directly for a political object, but the moment had come when it was 'not only lawful but necessary' for him to declare without hesitating that in his opinion the cause of the colonists, now under arms, was 'the cause of justice, of liberty, and of human nature.' It seemed to him that the essentials both of civil and of religious liberty were at stake ; and they were inseparable. 'There is not a single instance in history, in which civil liberty was lost, and religious liberty preserved entire. If therefore we yield up our temporal property, we at the same time deliver the conscience into bondage.' Moreover, 'it would be a criminal inattention not to observe the singular interposition of Providence hitherto, in behalf of the American colonies.' In practical ways the intention of Providence seemed to him to be made manifest, for he could think of no instance, as he wrote two years later,³⁵ in which a person or a people had 'so totally and uniformly' mistaken the means for attaining the ends they sought as the King and Parliament of Britain had in this contest : their whole conduct had been founded upon their mistakes. In a line of argument that went beyond Edmund Burke, who said of the colonies, when roused from their 'unsuspecting confidence,' that they augured misgovernment at a distance, Witherspoon in his sermon in May 1776 declared, not only that there were specific acts of injustice to be charged against

the mother-country, but that so great was the distance between Britain and the colonies, so much time must elapse before an error could be seen and remedied, and 'so much injustice and partiality must be expected from the arts and misrepresentation of interested persons, that for these colonies to depend wholly upon the Legislature of Great Britain, would be like many other oppressive connexions, injury to the master and ruin to the slave.' He enforced his reasoning in a metaphor, only slightly different from that of Turgot: 'When the branches of a tree grow very large and weighty, they fall off from the trunk.' 'The sharpest sword will not pierce when it cannot reach. And there is a certain distance from the seat of government, where an attempt to rule will either produce tyranny and helpless subjection, or provoke resistance and effect a separation.'

Added to this sermon, when published, was an 'Address to the Natives of Scotland residing in America.'³⁶ Wilson and Witherspoon were not representative of Scotsmen in America on this national question. Witherspoon was not a little perturbed 'to hear the word *Scotch* used as a term of reproach' by his fellow-thinkers in the controversy, and he resented the language of abuse to which he had been subjected by newspapers in his native country for his advocacy of political objects in his adopted home. Accordingly, he endeavoured to convince

men of Scottish birth in America that Independence was worthy of their support, by showing that it was 'necessary,' that it would be 'honourable and profitable' to the colonies, and that in all probability it would be 'no injury, but a real advantage to the island of Great Britain.' On the last-mentioned of these considerations he argued, as some had already been arguing in Britain, that it was unlikely that the commercial interests of the British people would suffer as a result of the separation. 'Trade,' he said, 'is of a nice and delicate nature ; it is founded upon interest. It will force its way wherever interest leads, and can hardly by any art be made to go in another direction.' It was to be expected, too, that an America free and independent would be an America alert and enterprising, liberal in her welcome to the immigrant, and bent upon developing almost boundless resources amid favouring conditions of situation, climate and soil ; and in that development Britain would probably, next to America herself, be the principal gainer, if she but treated the traders of America not worse than the traders of other countries.

In expounding rules for public speaking, Witherspoon laid down that one of the qualities of pulpit eloquence is 'force and vehemence' ; another, that the speaker be 'under the restraint of judgment and propriety.'³⁷ It is a combination hard to conceive, harder still to apply. For

Witherspoon as pulpit orator it may be claimed, that in one of his political sermons—and that one perhaps his greatest—he gives evidence of the strength of the combination. Even those (if any) among his hearers who could not with true political heart and mind be with the preacher in his Thanksgiving Sermon after Peace,³⁸ may yet have admired his rugged force, if not absolute sincerity, of intellect, his call to duty to be done toward the new-born State, with its hopes and possibilities and its trials still to be encountered, and his skill and confidence in presenting the grounds of a conviction into which, by persistence and from bias, he had drawn himself, that in ‘particular events’³⁹ of great moment, and in the end which the victors had set themselves to attain, were seen the influence and the favour of the Providence of God.

Witherspoon, in addition to being President of the College of New Jersey, was ‘obliged,’ he tells us,⁴⁰ ‘to teach divinity and moral philosophy, as well as chronology, history, and rhetoric’—‘excessive labours,’ he added, which by many had been assigned as the cause of the short lives of former presidents, and ought to be an argument with the humane and generous to induce them to make the due and intended use of the Proper Forms of Donation to the College by Will.

He had a teacher’s influence with pupils and over them—in his case, however, an influence perhaps

not indefinable, for his personality was neither spiritual nor elusive ; and many were sent to him by reason of his prepossessions and persuasions, for these were known. He was distinguished as a teacher. As president and as teacher he was distinguished in the work of distinction done by many who had been pupils under him. Although during his presidency of twenty years there were seldom more than one hundred students at the college, he had had as pupils twenty-three representatives, twenty senators, three judges of the Supreme Court, one vice-president, one president.⁴¹ Among his pupils was ' Light-Horse Harry ' Lee (whose cousin, Arthur, Witherspoon defended,⁴² for his able, faithful, and disinterested public services, against the charges of Franklin). Among them also was James Madison ; and it was only on formal grounds, it would seem, that another Founder of the Constitution, one born in the West Indies to which Witherspoon had appealed—Alexander Hamilton—was not gained as a pupil for the credit of Princeton.⁴³

In presence Witherspoon, in the eyes of Americans, came next to Washington. In his many-sided activity—at a season when even a boisterous energy could be effective, and in an ecclesiastic politically constituted may be suffered—as orator (who, Scottish-trained, did not observe Washington's fifteen-minute limit), as political inspirer, craftsman and instigator he was by no one far surpassed in

furthering the American Revolution. He had the Calvinist preacher's facility in reading and applying history, and could interpret by a light which historians are not called upon to deny, but which they cannot themselves take to guide as they review and judge even the greatest of national events. Through him, more than through any other of her sons, the University of Edinburgh and American Independence are connected. Yet there are those who believe that Independence was born in iniquity, and in the iniquity of children of Britain who took oath lustily, and themselves believed, that only they were the righteous.

SOME MARKS OF ENGLISH HISTORY

‘Liberty . . . must be limited in order to be possessed. The degree of restraint it is impossible in any case to settle precisely. But it ought to be the constant aim of every wise counsel, to find out by cautious experiments, and rational, cool endeavours, with how little, not how much of this restraint, the community can subsist. For liberty is a good to be improved, and not an evil to be lessened.’—BURKE, *Letter to the Sheriffs of Bristol—Works* (1823), iii. 189.

‘The rights of men are in a sort of *middle*, incapable of definition but not impossible to be discerned. The rights of men in governments are their advantages; and these are often in balances between differences of good; in compromises sometimes between good and evil, and sometimes between evil and evil.’—BURKE, *Reflections on the Revolution in France—Works* (1823), v. 125.

‘The moment *will* is set above reason and justice, in any community, a great question may arise in sober minds, in what part or portion of the community that dangerous dominion of *will* may be the least mischievously placed.’—BURKE, *Correspondence*, iii. 107.

IN the politics of which history tells the men who have to act are not concerned with counsels of perfection, but with rational plans of expediency—with

practicable schemes for the conduct of affairs of State : they are only seldom confronted with dogma or embarrassed by an abundance of political theory and ethical creed.

The difficulty and the value of the study of history, in its higher ranges and fruitful interpretation, are contained in discovering and examining conditions, in appreciating motives and interests, in observing the clash of opinions, in perceiving and estimating how means, usually imperfect, have been or might have been fitted to an immediate, realisable or desired end. Were men universally and abidingly prudent, the value of history would be lessened, but it would be at once calculable from a straight and simple view of the past in its congruous elements : there would be an intelligible and convenient Art of Politics : it would be possible and politically profitable to compile manuals of statecraft. But in politics—the politics disclosed by history—we neither find nor look mainly for uniformity or harmony. Instead, we detect different kinds, as well as different degrees, of discord—discord in thought, as in opposing schools, systems and mere tendencies of thought ; rivalry in action, as in contending policies and in breaches of continuity in the policy of a statesman or of his associates, disciples and party ; and the inconsistency or discord of thought with action, as between the dominant or characteristic thought or mental note of an age

and the prevailing and enforced action, or some striking abstinence from action, on the part of those who direct the State for the nation. Of these three types, the first belongs distinctively to the realm of mind—to literature, if, indeed, we should and may dissociate literature, with security and advantage to itself, from mind-in-action, from man's mind as it reveals itself in effort and in effects, in any age. The second pertains to the region of history, as history is narrowly and too often conceived—to history as the chronicle and record of mere 'events' and mere externals in the life of the past, with that which is really vital, even for the understanding of the 'event,' sacrificed or imperilled by the disproportioned and indiscriminate prominence assigned to what is on the surface of life. The third type—the antagonism between thought and action—provides the critical problems of history, for it discloses divergence between mind and the work of mind, between what is thought and what is done or was intended to be done.

This divergence, whenever found, is to be observed, and its causes are to be analysed; especially, perhaps, in the history of modern Britain, just because Britain has been more successful in policy than it has been attached to, or even been conscious of, political idea, and has rather applied thought, or has systematised thoughts, after action in a review and estimate of effects than used thought deliberately

before action as a logical groundwork, reasoned method, and well-equipped instrument. Haphazardly prudent, if not habitually, Englishmen have been thoughtful and wise, in general, only after the event—after success and, notably, after failure, with its lessons.

What is the idea 'England' after an England found herself—came to know herself and to make efforts to be true to herself? Whether we think of England as she has appeared to, or been revealed in, the mind of Shakespeare and Bacon, Hooker and his intellectual kinsman, Burke, Milton, Wordsworth and Tennyson, or think of her as she has been regarded and moulded by her great statesmen and men of action—by leaders and mainstays like Burleigh, Cromwell and the second Pitt—we reach one and a not indistinct estimate. It is that of a nation jealous of its liberties, and in that sense liberty-loving, yet not insensible of the stern need of order and discipline, laying stress on interests more than on principles, on advantages more than on rights, and directed by men who have been gifted with insight and caution more than with foresight and brilliance, who have lived for the future inasmuch as they have tried to see and to do the duty of the present. If, again, we view Britain, with her equipment and responsibilities, as she has been adjudged by the comprehensive intellect of a Montesquieu or the political and expedient sense of

a Friedrich von Gentz, or even, in spite of prejudice and perversion, by the average, well-informed, continental mind of Europe during times of crisis for Britain as in 1800 and in 1900, we reach by a more circuitous and less sure path a somewhat similar result—that England and Britain have prospered through regard for law and for liberty, for burden as well as privilege, for duties accepted and enforced and not merely for rights easily proclaimed, and that to the British genius and type of mind, undoubtedly composite but with constituents that prevail, we must ascribe distrust of mere theory, incapacity to follow theory through, and disinclination to submit or be subjected to it; that to it belong sagacity and balance, as of the Roman, not the alertness of the Athenian, a certain narrowness of vision when more than the immediate issue is in question, but a sureness of foot for the day, a liking for precedent and attachment to the real and the feasible, readiness to make surrenders by way of compromise for convenience, for peace of mind and the satisfying, unideal conduct of everyday vocations. Of England or of Britain it cannot be said that, born to be a nation and a State, it ever was or has become either merely an industrial organisation and a commercial machine, or, in violent antipathy, a perilous association of dreamers and theorists, pure thinkers and well-intentioned philosophers. In England there has been less wisdom than in

ancient Athens ; there has been as much sagacity as even at ancient Rome.

The mind of the historical inquirer and political critic is at once, or by easy transition, discreetly sympathetic and relentlessly severe. Justice—historic justice—is the high end of the historian's task ; and with his knowledge of men, times and conditions, he recognises that for historical judgment there can be few standards fixed and absolute. In history and in politics no rule or injunction should be more insistent, and none is more equitable, and none in many cases more difficult equitably to apply, than that of relativity : it moulds the aspirations and achievements of prudent men, and it should direct in the judgments that others pass in wisdom upon them.

Englishmen who know and feel the history of England are impelled, like Burke, almost to consecrate the State, and such will construct a national Bible from the record of the nation's life and its appreciative interpretation : others inherit or mysteriously acquire the political aptitude proper to Englishmen : others still—the many—never enter into the heritage nor acquire possession.

The test of national character, as of individual, is in its trend. To pursue and to determine the trend of English politics would be a lengthy, and at times an elusive quest ; but, at least, we can pursue

at closer quarters than hitherto, and we may thus see some definite reason for what may appear to have been laid down on somewhat arbitrary assumption.

Although we must look with question and suspicion on pictures of primitive democracy, the primary principles or dispositions underlying English political life, in the earliest age of the authenticated history of the English race, were strongly, if not predominantly, those of liberty. The dispositions were rudimentary, befitting primitive social relations and political needs. They were also expansive, partly because they were not fully secured, partly because, in spite of formalism, they were not so rigidly confined in precise formulae and fast-fixed provisions as not to be capable of responding to interests themselves changing and developing. The tradition of liberty came to be in excess of what the reality had been ; but in political life a nation's mere idea of what has been—a view held by itself, or by an affected or assertive part, of what it is entitled to—is as important as the working of realities, until these two—idea and reality—clash and struggle for mastery. In these facts is contained a broad and lasting significance. Reduced to one formula, the problem of politics is to harmonise authority and liberty—*imperium et libertas*—those ‘miserable opposites,’ Clarendon, herein hardly a representative Englishman, termed them in circumstances

that condone his despairing estimate and evoked the political pessimism and unconstitutionality of Hobbes. In the effort towards adjustment between authority and liberty—the former an essential attribute of the State ; the latter, of the nation, or of elements in the nation—authority has been, and has had to be, the aggressor : liberty has had to be saved from its own extreme, its own excess : it has often repelled the claims and advances of authority, and yet only by association and partnership with authority could liberty itself be strengthened and endure. Without this political formula before us we miss the bearings of the great epochal events, the transitions and the crises of English history. The Norman Conquest, with its problem of the extent to which English and Norman contributed in aptitude and in institutions to the resultant in the England of the days of the Great Charter ; the administrative system, non-parliamentary and parliamentary, of the Plantagenets, with the meaning and force of administrative authority indubitably disclosed by the first and by the greatest of the Plantagenets and through their agents and agencies ; the Tudor régime, with its absolutism, enlightened and remedial, and yet for a succeeding age and other conditions perilous ; the struggle between Monarchy and Parliament, between an independent or partly irresponsible executive and an aspiring, aggressive legislature under the Stewarts ; the character of

the Revolution as both a subversion and a settlement : all in political analysis must be tested by the fundamental formula which runs through political history.

The existence of an early, rudimentary basis in liberty and the persistent attachment to it explain, further, why the policy of authority, at times healing and essential, has usually been resisted as a breach with the past—an encroachment on rights. When a nation or a large body of a people feels, or even merely deludes itself into the feeling, that it is being wronged, it is in a dangerous mood—the more dangerous in proportion to its political training and cohesion. It then demands respect and considerate treatment ; and of Englishmen, not alert, inquiring and transcendent in mind, but practical, staid and even somewhat sluggish (it is of the many, and of average and type we speak), it is true that they have their intellectual, moral and political seizures, which call for sympathetic and discreet treatment, just because the outbursts, though issuing from conditions historically discernible, with initial symptoms in a past not near, are not regular nor periodical, cannot with any certainty be provided against, and are with difficulty, if at all, to be met by temporary and partial expedients. The disposition which waits before asserting itself, until there is an accumulation of grievances, or until a wrong or an obstacle has become flagrant, may not practise self-denial in

waiting and working for the remedy : it is a disposition, however, to be reckoned with, especially at such time of awakened consciousness and probably precipitate zeal. The temper of Puritan England, the means by which that temper was embittered, and the manner and degree in which it failed, or fell short of its own inner worth and ideal, reflect and illustrate this disposition. In different moods it is reflected also by the provisional character of the Restoration and the reasons for its political inadequacy, and for the tolerance extended to it ; it is reflected by the more practical and effective character of the Revolution, with its binding chain of causes and effects, and, at least negatively, it is reflected by the detached attitude of the English mind and the self-sufficiency of the English constitution, though in proved need of reform, amid the subversive politics of the French Revolution.

Such facts and considerations as have been urged explain the persistent appeal to precedent made by the English in their political life—their appeal to and veneration for that old English law—those customs and rights—traditionally known as the Law of Edward the Confessor, for the Great Charter, and those other compacts between king and nation, or a community, which give effect to principles, embody rights, assert liberties—not a general liberty—and fix bounds to authority or, rather, to specific claims of authority. This appeal to precedent we owe, in

part, to the rule and working of mere customary observance which is the all-prevailing mark of primitive societies—that without which law itself, for them, and the law-abiding spirit cannot be ; but we owe it also to this vital mark supplemented and corrected, for without supplement and correction customary observance results in political stagnation and the absence of the higher political virtues of a people. We owe it to a love for the past, to confidence in the past, and to a desire for continuity—a desire never quite rationally based but springing for many from contentment with one's physical lot in life and the gifts of Nature, or a mere acquiescence in it, whether it be from timidity or from a prudent dread of worse. We owe it to political thrift—to disregard for new methods and instruments as long as the old and familiar retain some utility and in skilful and trusted hands can be shown to possess some flexibility of adaptation. Mainly by this instinct, practical but with evident limitations, is constituted the genius of the English in politics.

This appeal to precedent and the regard for expediency, which is the offspring, and usually acts as the support, of the appeal, have not in the history of England been stagnant forces, agencies of a cramped conservatism. Why? Chiefly because, in the view especially of succeeding generations, there were foundations in rights and liberties, and

because the fresh application of old principles and rights amid new and wider social conditions, with relations of life and citizenship and the mind of man expanded, brought with it a new and wider interpretation, a more generous, though perhaps a more dangerous, reference of the old principles. In precedent, definition and adaptation is summed up much of the critical and creative politics of England : initiative and innovation England has long known and practised, of the kind that calculates and counts steps ; but the initiative and innovation of daring—of such as dare that they may more greatly do—while it has been fruitful in foreign enterprise to Britain, and was politically favoured by many men of high courage and hope in the struggle for Parliament and Puritan, has had a relatively small part in forming the State and shaping its administration. The politics of Britain—the political system and the political life of Britain—we can understand and explain only by Britain itself. The test of the constitution is not in absolute theories of politics, but is found in Britain, in the England of each age, in the habits of life of Englishmen—their disposition, their strength and failings—in the manner and the degree of the response of the constitutional system to changing economic and social conditions, and to the political aspirations and endowment of the people, in provision by letter for an advance in spirit, in the measure of security to which, as under

an unwritten, flexible constitution, trusting in conventions and political morality, the spirit can live of itself and be beneficent.

From what has been said, and from ordinary knowledge and appreciation of the history of Britain, it will at once appear that there are two schools of thought in English politics, and, less pardonably, even among the historians of England ; and that the truth is with neither of them. There is the school whose watchword is freedom, improperly conceived ; there is the school whose criterion, in contrast rather than in complement, is authority, improperly applied. The former school presents what it would itself deem the sympathetic view of development in English politics and of the growth of Britain : on a favourable criticism it would be termed the ideal view ; on a severe criticism, the sentimental and slender view. It abounds in appeals to ' national ' freedom and assertions of ' national ' policy : it makes and it argues from the assumption that whatever is parliamentary is ' constitutional '—that parliamentary progress and constitutional progress are one : it looks to popular rights and liberties, and somewhat disregards, because it does not adequately understand, needs of State. For example, it points with substantially unqualified approval to the action of Simon de Montfort, and readily accords to him the rôle of a national hero, but it ignores the partly expedient,

if not sectional, if not personal, ends he had in view. It finds in Edward I. a national king of England with aims purely national, but, untrue to historical perspective, false to that higher estimate of conditions, purpose and achievement in which, more than in accuracy of single and disconnected facts, the truth of history consists, it depreciates the hard reality and the stern need of organisation of government—that equipment of the machine of State, in its supervisory and coercive capacities, which, for Edward I. and for statesmanship in the circumstances of his age, was prudent and necessary. Similarly, it bestows a lax approval, generous but not just, on the growth and recognition of Parliament under the house of Lancaster, although that growth took place at the cost of efficiency in administration, was out of harmony with prevailing social interests in England and the necessities of government due to the dispositions of great families, and led, in short, to want of governance. Tudor rule it condemns as an invasion of ‘constitutional’ liberties: it minimises the virtue of the efforts made under the Tudors and conciliar government towards an ampler, more expeditious, and more efficient executive. In the Stewart struggles it arrogates to the parliamentarians the title of ‘constitutionalists.’ In the Commonwealth it sometimes flounders. Cromwell’s troubles are to it a heritage of trouble: there must be sovereignty as well as rights and liberty. It

glories in the Revolution: with Burke it may justifiably assert that 'the nation, in that act, was on the defensive'; but it does not allow sufficiently for the character of the prime movers, and, through not distinguishing between Whiggism and Whig endeavour and practice, it unjustifiably describes as parliamentary, national and popular a government or a framework of government that was, and partly from its origins in the Revolution came still more to be, oligarchic—a government by 'connexions,' in invidious interpretation. In the nineteenth century this school, temper or policy found its task and its privileged position in the championing of the cause of parliamentary reform, with a view especially to a wider recognition of citizen capacity as recognised at law in voting rights to be entrusted to larger masses of the people. With this achieved—with the working and the power of a majority system fixed in a constitutional, but not regularly limited, democracy—its continuous, constitutional function has in large measure gone: the problem of its attitude to industrial and practical politics remains, amid governmentally popular conditions and imperfect constitutional safeguards, for both of which it is mainly responsible, or against which, faithfully to itself, it could not protest.

Typical leaders of this school of thought in England are Sir John Fortescue (in part), the Puritan writers, Locke, Bentham, and, though with much

of the falsehood of extremes, the author of *Political Justice*, William Godwin. Its political heroes are the Hampdens and Pym of history. Burke, as thinker and politician, divides his allegiance. Pitt the younger the school cuts in two and claims the safer half. In its survey of the history of England and of modern Britain it lays more stress on forms than on substance, more on 'rights' than on comforts, more on the manner of rule than on the persistent and hard conditions of the life of men in society that test the reality of statesmanship, and demand capacity for seeing clearly and judging soundly and courage to act—with severity, it may be, in order to save. It makes too little of prudence—'in all things a virtue, in politics the first of virtues.' ¹

The sympathetic, idealistic or merely sentimental reading of English history can be easily consistent, and it simplifies the task of the historian who is captivated by it: by it a line can be pursued, for it can emphasise the broad foundations of English liberty, the attachment of Englishmen to their safeguards from the past, the cry not for fresh privileges but for old rights—the continuity of English institutions along the line of freedom protected by precedent. But in spite of its deference to precedent it is an estimate unhistorical, because not political. It is partial, not just. It ignores, or gives little countenance to, half of politics: it does not see politics

whole : it is blind to, or looks askance at, authority : its liberty is not a liberty politically secured ; for even in the history of England, with an approach to continuity unexcelled in the growth of its institutions, there are times when the pressing problem for statesmen was how to limit freedom in order to save it.

In history we may, and must often, illustrate merely, when we can not or will not prove : we adopt a device of convenience or of despair. If we may not establish, by continuous narrative and a comprehensive retrospect, let us exemplify the devotion of the English to precedent, their practical instinct in politics, their contribution and loyalty to a democracy that does not dissolve the State and does not destroy the nation through loss of unity and identity. But we illustrate only after precaution and with a proviso. There has not always been a happy correspondence, not invariably a fruitful alliance, between dominant or typical thought and enforced action even in the history of England. In such divergence and conflict that which is enforced needs the clearer testimony and explication in its behalf. In pursuing and recording the course of change we are apt too much to ignore protests for the old, the opposition, the drag in history : we judge by external success, by what prevails. Striking innovations and many great triumphs have

proceeded from minorities : such may even be due to one unsettling, suggestive and fertile idea of one brain. But may not great things also be left behind, abandoned with the minority, with that remnant which though vanquished may, notwithstanding, be virtuous ? There is not always incorporation or assimilation of all that is good in the old when the old is transformed. The protesters against the old, to whom the measure of progress is ascribed, have need, especially in time of sudden triumph, as much of historical sympathy and political caution as of fertility of political idea. In such case only the rule and method of averages and of probabilities can be applied in politics and in historical estimate : we merely approximate in idea to the truth, and in action we merely approximate to success.

The record of British statesmanship shows that the great epochs of the history of Britain, politically viewed, are in kind mainly two : either they are those in which liberty and authority have been in healthy association, or in a simply unsuspecting confidence, through a community of wills or a temporarily happy surrender of the wills of individuals and ranks of men to the State and statesmen ; or, less normally but even more influentially for the future, they are those in which, under prudent, though it may be unpopular statesmanship, a deliberate effort has been made to adjust the balance between liberty

and authority with a view to healing and strengthening the State in the interest of the nation. Few of the statesmen of Britain have set out on their course with a programme and adhered to it ; but whether from conviction and from consistency, or merely from the pressure of necessities and after experiment and hard experience, the makers of England and of the Empire of Britain have recognised the mutual dependence of liberty and authority, the play of parts in the constitution, the need for a fitting of parts. Politicians when in power realise what writers are thinking when they say that a constitution is the manner of life of the State or of the nation in its political activity, that a constitution provides, or should not hamper, means for that activity, that it may fix limits to purposes and plans of one kind, and leave men free for purposes and plans of other kinds. The responsibility of State office for but a short time is necessary to enforce the principle that an official act is an act of State, that the representative spokesmen of a party when called to office throw off—should throw off—their irresponsible party character, being in responsible power with command of the equipments and strength of the State for the well-being of the community as a whole. That sovereignty is a relationship, involving both rights and obligations for both sovereign and subject, is at the foundation of all politics and pervades all the economy of the State.

William I.—Conqueror and with his policy conditioned by the fact and the nature of the Conquest, Norman and never divesting himself of the Norman character and genius, but also English and in effect national because at once broad and steady in his view of administration—is great as ruler because his measures help to promote the growth of a new composite nation by helping to weld the composite elements of the State. Edward I. is by many revered for a parliamentary, constitutionalist design: with more acumen and sounder historical judgment he is deemed a keen-sighted, calculating and capable organiser of executive and administrative power. Henry VII., in possession of State authority and using it discreetly and with full purpose after the upheaval in government and throughout the nation before and during the Wars of the Roses, consolidates the strength of the Crown as the mainstay and security of all law and all policy, but this he cannot do without reference to the nation and dependence upon it; and the rule, thus directed by its founder—a rule both repressive and remedial—continued to be substantially, though not in due forms, national in many of its manifestations under the second and the last of an able dynasty.

The political task for the Stewarts and for men politically interested at the time was how to utilise in a harmony the expressive function of Parliament and the governing force of the executive: none at

the outset saw that more clearly than Francis Bacon, and no one was more insistent on the need and value of understanding between the two powers in the State. But policy was already in dispute, not merely formal politics ; in particular, ecclesiastical principles and prejudices intensely held made men divide politically and inquire into and take their stand upon constitutional principles, without the aid and enforcement of which the ecclesiastical principles themselves could not be aided and enforced. Therefore, the fundamentals of the State in England were examined and disturbed in Puritan experimental politics—were partly abandoned and could never be wholly recovered, since men had in reason as well as in fact outlived the conditions of expediency to which they owed in part their origin and by which they had been supported. Cromwell, personal and nominal exponent of a Commonwealth, is a political paradox, not inconsistently with the times by which he was tested : nurtured on the principles of Hampden and Pym, he is impelled to deeds and methods like those of Strafford ; by the same minds he is admired and is denounced, for the Protector of an England torn with dissensions, in need of consistency (were it possible) in policy if there were to be a settlement, realised, almost in a political irony or nemesis, that there are demands of rule as well as of citizenship, that a constitution exists for mediation, and that government is a

compromise and depends upon concessions, forbearance and goodwill. Without such understanding, appealing to practical men and applied and shaped afresh by them, there could have been no party system (instead of mere uncontrolled party rivalries), no development of ministry and cabinet, in Britain.

Thus, also, the second Pitt in his constructive statesmanship before the French Revolution seeks at once to organise and make harmonious the machinery of the State, and to work upon and to expand the basis of the nation and of a new society, entitled to political recognition, in Britain; and, while in his later schemes of State he departed in outward effort from the spirit of his earlier reforms and positive endeavours, this and not more can be charged historically against him, that he misconceived, though less obliquely than Burke, the immediate and impending evils for his own country from a political cataclysm in France: he shrank, but over-cautiously shrank, from applying and persisting in a policy which in happier days had been held by him to be safe and statesmanlike, and had been made by him his own, but which amid the new conditions was dreaded by him as inexpedient, as possibly subversive, and an encouragement to those who would imperil the State and rights established. Similarly Peel, although with Peel the process—the order of change—is reversed in accordance with

the call and tyranny of conditions, in the knowledge of which is the power of the statesman. With the growth of manufactures and commerce had come, as Peel's father observed, the rise of a supplementary race of men in Britain. Their interests demanded, and politically were entitled to, recognition, and to recognition not in constitutional provisions merely, as in the great Reform Act of 1832, but in substantial measures of State policy. Considerations of policy forced upon Peel a revision and readjustment of the principles of his politics. Against him was brought a charge of inconsistency, but it was an inconsistency of such quality as is a tribute to the statesman and not his condemnation, marking off expediency in affairs of State from the opportunism of the mere politician. In 1846 he was impelled in self-defence to a definition of public duty. There is this 'valuable privilege in power,' he said, that it 'affords great facilities to the holder of it to render his country service, according to his sense of the public good.'² Two years before he had used words that may serve to define the relation of modern constitutional statesmanship to popular government without impairing either the dignity of statesmanship or its efficiency: 'Our duty is to take a comprehensive view of all the great interests, commercial, political, social, and moral, of all classes of this great empire. It is a maxim of distributive justice, a maxim of law, a technical rule, in the

administration of justice—*volenti non fit injuria*—that injury cannot be to him who consents to it; but you, devoted to perform the duties of watching the welfare of a great country, you cannot act upon that principle. And it cannot be a greater proof of your possessing attributes appropriate to the duties of legislation, that you reverse the maxim *volenti non fit injuria*, and you tell the people, “We will resist your wishes in order to promote your welfare”: “We will discharge the duty assigned to us, on account of our being able to take a more comprehensive and more beneficent view than you can.” I protest, then, against the doctrine that we are to concede because it is the popular will. If we are satisfied that it is not for the popular interests, then it is our painful but necessary duty to resist.’³ ‘Nothing could be more base,’ he said in 1846, ‘on the part of a public man than to protect himself from danger by pretending a change of opinion; or more inconsistent with the duty he owes to his sovereign and country, than if, seeing reason to alter his course, he forbore to make the alteration by the fear of being taunted with a charge of inconsistency.’⁴ In proposing his momentous changes of 1846 he contended that he was ‘yielding to the force of argument and conviction, and acting upon the results of enlarged experience.’⁵ A position like that claimed by Peel, and acted upon by the two Pitts and by others, must lead to breaches

of the conventions of politics and of political morality under a parliamentary party system, but, inasmuch as parties are subsidiary to the State, such breaches are readily condoned: the code of party obligation and honour is not universally binding, and can never be clearly defined nor rigidly enforced.

Crises test the character of nations as of individuals, accentuating some traits, depressing others, and giving to the central or dominant virtue an opportunity to assert itself and prove its worth. Of France during the Revolution it has been said that 'in a few years' she 'described the whole circle of human society.'⁶ That crisis or succession of crises is unequalled in the history of England for the display of character on a large scale and in vivid surroundings and for mental ingenuity and executive boldness in swift emergencies. But at several crises and on many calls for decisive action English character, individual and national, is seen in clear expression, with something permanent and dominant in its attributes. In the history of modern Britain three crises called for the practical virtues of a politically gifted people—that of Puritan ascendancy and that of the Revolution of 1688, at both of which constitutional securities were in the making, and that of the French Revolution, when, owing to narrowness and defects in the equip-

ment of the political machine in Britain, constitutional securities that were inherently sound, though imperfect, had themselves to be safeguarded against external, alien aggression—against influences from revolutionary France.

The first of these critical periods—the Puritan—bears close analogy to the French Revolution in fertility of ideas, in rapid succession of crises, and in the tortuous, rather than expedient, executive action taken by those in authority or in power; and yet even from this time of crisis, when the duty of man, political and religious, seemed to consist in ridding himself lustily of that which burdened him (as Harrington,⁷ the theorist in politics, said of Rogers, the fanatic in religion)—even amid these most unfavourable conditions in the State and owing to them—there came a strong appeal for an adjustment of contending principles through a surrender of whatever was extreme and perverse; and in the result ‘the people of England came to hate the name of a Commonwealth without loving their liberty the less.’⁸ The prevailing note of the Puritan era in our politics is that of ideal and dogma, and of such ideals and dogmas as could not be uniformly enforced—could not be embodied in effective laws and injunctions—because of discord so marked that even the Puritans were not at one among themselves: whence, in practice, experiment and innovation, but it was an experimental

innovation aimed at a monarchic system which those who framed and sought to apply the experiments held to be unconstitutional, unnational, un-English. Even these experimenters, moreover, claimed that precedent was with them in their first efforts ; and in their later efforts they interpreted precedent in their own way and for their own ends. Voices were raised for political symmetry, and a formal constitutional harmony, with the past. When it was suggested that the Protector should take the title 'King,' Cromwellian sympathisers with the proposal urged that there would thus be a reversion to 'the best-known and most agreeable kind of government to the English people': the foundation would be an 'old and sure' one: those governments are best 'which are upon proof and long experience of our ancestors, and not such as are only in notion, such whereby the people may understand their liberty, and the Lord Protector his privilege.'⁹ Precedents could be and were variously interpreted even by Puritan politicians: in the sphere of jurisdiction, in particular, difficulties were encountered and recurred: therefore it was necessary to approach them not as Commonwealth-men merely, not merely as Parliament-men, but as Englishmen of the day and as Englishmen with a trust: 'We live as Parliament men but for a time, but we live as Englishmen always.'¹⁰ There was a debatable land within which the general

powers and pretensions to competence of the House of Commons trenched upon the distinctive authority of the Protector in what concerned the 'public safety,' and in this region of danger, while each should be alert and jealous, both at times 'must wink': they should know how to 'wink at one another.'¹¹ Cromwell found too few in his Houses of Commons to whom he could look to do this in the right way for him; and when the Protector determined that there should be something to stand between him, acting as executive and for a State, and the 'tumultuary' spirits of the House of Commons, presuming to speak for the nation, and it was decided that there should again be a Second House, he was solicitous that the men nominated by him to this 'Other House' should be men of the responsive type—men not hypercritical and querulous, but of the kind that 'shall meet you wheresoever you go, and shake hands with you, and tell you it is not titles, nor lords, nor party, that they value, but a Christian and an English interest.'¹²

That Cromwell and the 'pretended' Commonwealth, which was not his own, failed to adjust and reconcile, is to be ascribed to departure from English instincts—individual, social and political—to the intrusion and obtrusiveness of a too rigid system of religion and politics and a too cold and austere scheme of life—to an attempt to force mind

and conduct. There was un-English neglect by Puritan politicians, and by Puritans not politically minded, of those habits, although they were still not firmly rooted, and of those limitations and securities of Englishmen, although they were not yet fully accepted, which required, even in their incomplete strength, that, by reason of the nature of what was assailed and of what was intended to prevail, there should be spontaneous and perhaps unperceived growth—spontaneous and thereby the stronger. The failure of Puritanism at its best to effect its self-assigned, earnestly assumed, national purpose was due to its superabundant fervency, inseparable from its own character and ideal, to its lack of English restraint, and to resulting artifices and excesses on the part of many of its exponents and devotees—perverters of the best; but its failure to stamp its impress, in its higher attributes, on Englishmen in the mass was due, also, to the expected recipients—the average Englishman of Elizabethan ancestry—being devoid of an elevation and spirituality that are un-English, that are more than or other than English. The limits within which operates the capacity of the State to direct and to coerce had been passed, especially of a State whose right to sovereignty was in dispute: by imperfect foundation and by transgression the State of the Commonwealth lost its power—had to submit to the revocation of power: by self-assertion

the nation—the community in so far as there was one, within a nation discordant—had to repudiate the State. In this repudiation and sense of relief there was loss as well as gain, for there had been involved more than art and manner of rule—more than a mere method of achieving.

‘It is,’ says Clarendon in criticising Hobbes, ‘a very hard matter for an architect in State and policy, who doth despise all precedents, and will not observe any rules of practice, to make such a model of government as will be in any degree pleasant to the governor, or governed, or secure for either.’¹³ ‘And he is much a better counsellor, who by his experience and observation of the nature and humor of the people who are to be governed, and by his knowledge of the laws and rules by which they ought to be governed, gives advice what ought to be done, than he who from his speculative knowledge of mankind, and of the rights of government, and of the nature of equity and honor, attained with much study, would erect an engine of government by the rules of geometry, more infallible than experience can ever find out.’¹⁴ A restoration of institutions—monarchy, House of Lords, Church—was historically befitting in England in 1660, but the old manner of viewing them could never be restored in the average consciousness and sense of the community. The duration and the intensity

of the crisis through which England had passed made it certain that there would henceforth be sidelights along the central path of the nation's development, and that over the deviations from that path the central light of the State must throw itself, with a power to illumine measured by foreknowledge of directions and tendencies. The Restoration which came had regard too nearly exclusive for the central path, and had too little disposition to make it broader. Clarendon himself, to whom much in the character of the Restoration was due, had not been able to conceive, from the outset of the struggle in the reign of his late master, 'how religion could be preserved without bishops, nor how the government of the State could well subsist, if the government of the Church were altered,'¹⁵ and he was too pronouncedly a supporter of the Church of England to reckon liberal-mindedly with that 'composition of contradictory wishes and expectations' which he thought must have appealed to every discerning man at the Restoration amid 'the general noise and acclamation, the bells and the bonfires.'¹⁶

The Revolution of 1688, less extreme than the Puritan revolution, is more typical of the political methods and traits of Englishmen. It was a movement and a deliberate effort to defend rights endangered: it was an assertion of the rights of

Englishmen, not of the rights of mere individuals, not of the 'rights of man': it was designed to conserve, not to subvert. Experience was made the test: thus, 'it hath been found by experience' (it was declared) 'inconsistent with the welfare of this kingdom to be ruled by a Popish prince'; the several clauses in the Bill of Rights are aimed at specific breaches of faith and violations of existing law by James II.: Locke, the apologist of the Revolution, was writing at the time that 'a good prince'—an executive able and trusted—'cannot have too much prerogative.'¹⁷ The rights claimed are claimed as 'true, ancient and indubitable.' The historic deed of 1688-89 was revolutionary in its main external manifestation—the deposition of the king; but in substance and in immediate issue it was protective. It professed to be a design and a last resource to save the constitution—to save even the monarchy—from itself owing to the excesses of the monarch, from whom as from the chief member loyalty to the constitution—to what was established in Church and in State—was pre-eminently due. Through the use of some political instruments and powers by the monarch, and through the ineffectiveness of others against his excesses, men of different religious persuasions had been exposed to dangers in common from the Roman Catholic head of a non-Romanist State. They therefore united for a fresh definition of these

instruments and powers within the constitution, and, with the opportunity given to Whigs by the action of James and with the excuse available to Tories, it became possible to construe personal kingship in terms appropriate to official kingship—to think of King in terms of the Crown. Whereas, under the first of the Tudors, authority had to save liberty by subjecting it to tests and restraints, liberty or the conscious possessors of English liberties had now to save authority or to make its exercise salutary by constitutional definition, expansion and adaptation. The notes, therefore, of the Revolution are found in precedent and rights established ; and in its course and conduct, to make it national, to prevent it from being merely partisan—merely Whig—it had to submit to compromises and to some political inconsistency for the practical achievement of a great political purpose. The principles of the Revolution do not bear logical analysis ; there came to be a Revolution myth in our history : the Revolution was interpreted by Whigs conveniently for party ends. The constitutionalism which resulted and is still in process of development is not a rational harmony. But both Revolution and result, together with the process by which that result or the present stage in the process has been reached, rank high in modern history as illustrations of genuinely political aptitude and method, of the limited range and yet the per-

manence of theory and ideal, of the force of circumstance in the practice of politics.

In Britain at the French Revolution much that was inadequate and had been by many condemned in the facts of government had to withstand much that professed to be absolute and to many seemed unassailable in the theory of politics. There was danger in the glitter of theories from France just because there were very distinct flaws in the constitution in Britain. Flaws had been admitted by Pitt ; and when Pitt, with his energies deflected by the Revolution, ceased to be the constitutional reformer, his defence was not that of ordinary expediency, but was found mainly in the call for national and State ' security '—the ultimate call in government. The protest—rights withheld from ' the people '—was met by the argument of advantages already won for the nation as a whole : the imperfections of the present must be viewed in due relation to benefits from the past. Against equality as a theory and a cry was set equilibrium as a fact and a benefit : constitutional equilibrium, not perfect but already tested and tolerable—the equilibrium of a constitution which was the political expression of the life, of both the energy and the apathy, of the people of England—was not to be imperilled by the doctrine or opinion of equality—an equality that was not the true historic fulfilment of the life of any people

whatsoever ; and the appreciable and lesser evil of particular flaws in the constitutional machine must be endured for a time owing to inappreciable and greater danger then threatened from subversive and un-English designs on the whole being of the State.

At the French Revolution the English political character asserts itself more decisively even than at the Revolution of 1688, for the competing force was deeper and stronger : it manifests and fixes itself against what claims universality, against that which it could not understand, against that which it could not at once assimilate. We cannot, indeed, say that any one and only one type of mind in politics was either threatened then or prevailed then in Britain. The assailing force itself, from France, was not single, but composite and full of surprises. There was not a point—one point—of attack : there was no concentration of a hostile political force. We of a later age—mere investigators and reviewers, dispassionate in considering even times that ‘tried the souls of men’—can see that the constitution, partly reformed of late for purposes of administration, and, though with imperfections and anomalies in structure and competence, so far a worthy instrument as at least to tolerate, if not to promote, Pitt’s remedial measures for five years before the Revolution, was a constitution fit to resist the onset of doctrines that

were of almost limitless range, that were without distinctive national character, and were not peculiarly applicable to Britain under the guidance of Pitt. The problem was that of calculating the force of an impact which was itself to be warded off ; and, owing to conditions and events in France more than in Britain, the policy of caution led through continuance and excess to severity and repression ; and it can have only this measure of defence—in the circumstances almost adequate—that it evoked rather intellectual protests and sectional opposition than a resentment genuinely national. A nation logical, passionately given over to politics, even with the appliances then available in Britain, a nation not cautious like the English, would have been less easily restrained by the measures taken and under the methods enforced. A nation not gifted politically would not have been able in succeeding years to incorporate so much of what is valid and lastingly righteous in the principles of the French Revolution.

Hardly less significant than these crises are particular and minute illustrations of expedient action, of application and extension of precedent, and of unforeseen success in the history of England, if, indeed, in reviewing a political growth which has been largely unconscious, we may thus draw a distinction between what may seem incidental

and what has proved to be essential : for where the incidental has been constructive it is not to be kept separate from the essential. What a people (or a political community within it) does, or joins in doing, or permits to be done, and the manner of doing it, from force of habit—doing it ‘by the way’—when the nation is not on its trial, or when responsible rulers and politicians are not gravely deliberate, form the normal index of the nation’s character, capacity and limitations in politics. Thus the rise of county representation in a national English Parliament is intimately bound up with the earlier and convenient practice of electing representative knights to choose grand juries for the conduct of the modes of trial organised under Henry II. : a device successful on a narrow scale was accepted and applied as a feasible design in the wider ranges of political initiative and control. Similarly, the plan of assessment of taxation by a local jury, found to be a convenience, came to be applied, as a convenience, and owing to its success, for national purposes in the national or central assembly, and in short time this assembly not only granted the tax and decreed or concurred in its amount, but also began to demand as a right the power to settle its appropriation for purposes admitted by itself to be necessary and national. A device grew into a precedent, and was merged in a larger policy—in the wider political action taken.

These transitions when looked back upon seem natural and easy : we term them 'developments.' But we must not, unhistorically, read the significance of the later and broader process into the earlier and narrower. The earlier principles and practices were not adopted with the hope and intention of expanding them in such way as further to limit monarchic authority and further to extend parliamentary rights and powers, if they proved successful : there was not, in short, a design of educating the people in habits of self-government. Yet, while the ultimate results—the full application or applicability of the principles and their bearings—were not foreseen, the earlier practices are more than casually connected with a broader process and the wider results. They are parts of an understanding, though not of a preconceived design : they are links in a diversified chain of political step and consequence, forged not swiftly by reason, but slowly with time and circumstance.

The history of the parliamentary oath since 1679 is a striking illustration of English ways in politics, especially the history of the oath as affecting Jews desiring to sit in Parliament. In 1850 Baron Lionel Nathan de Rothschild claimed to take the necessary oaths with the omission of the words 'on the true faith of a Christian.' By resolution he was declared to be ineligible : he might still rank as the choice of the electors, but he could not sit and

vote. In 1858, after much discussion and contention, a compromise of English type was struck. One act of that year (21 and 22 Vict. c. 48) introduced a single oath for the several oaths of allegiance, supremacy and abjuration required since 1679, but retained the words 'upon the true faith of a Christian'; and by the next act (21 and 22 Vict. c. 49), at once the complement and the denial of the preceding, either House of Parliament might by resolution permit a member of the Jewish religion to omit the words, 'I make this declaration upon the true faith of a Christian.' In 1860 the resolution, of force only for a session, was converted into a standing order. Finally, the Parliamentary Oaths Act, 1866, prescribed a form of oath from which the words were altogether omitted. 'If you can show,' Peel had said in 1848, 'that the maintenance of certain religious opinions of the Jews is a decisive proof of their civil unworthiness, you may have a right to exclude them from power; but the onus of showing this is imposed upon you. The presumption is in their favour. The presumption is, that a Jew, as a subject of the British Crown, is entitled to all the qualifications and the privileges of a British subject. You may defeat that claim by proof of danger to the State from admitting it; but the onus of proof lies upon you.'¹⁸ 'There is no jealousy of the Crown,' remarked Peel in the same characteristic speech, 'in respect of the

appointment of Jews to the most important civil offices, but such jealousy of the Christian electors of this country that you will not permit them to send the man of their choice to this House, if he happen to be a Jew.' ¹⁹ The inconsistency was of a kind that has had many examples in our political history. The definition of the rules of Parliament, not less than the determination of laws, has proceeded piecemeal. Schemes of action, principles of conduct, have not been made logically complete—politically symmetrical. Grievances, conditions of injustice, especially such as are not general in their reference, have not usually been remedied until they have become notorious and flagrant.

Let us take as a final illustration one important both for principle and in practice in English politics—what is termed the 'rule of law' under the English constitution. The exceptional and privileged position accorded to officers of State on the Continent under the protection of established 'administrative right,' whenever charges are brought against them and offences are alleged in the performance of their duties, is unknown to and is alien from the working and the spirit of the political system of Britain. In Britain, officers of State and the citizen, the authorities (under the Crown but acting for it) and the subject, are equally amenable to law and to the same law, in procedure and in penalties. That is an enduring provision in favour of civil

liberties. But it has, or may have, its shortcomings and perils at times of civil commotion—in days of riots and riotous assemblies. A weak executive—an executive temporarily and at just the wrong moment weak-kneed—may hesitate to exceed the normal powers and functions entrusted to it, may shrink from strong and energetic measures, owing to dread of the immediately sovereign power of Parliament and of the ultimately sovereign power of the people. Such has been the test of a measured, discreet statesmanship in administration (in which as much as in legislation statesmanship is revealed) in turbulent and critical days in our history—in those of the Jacobite Rebellions, on the occasion of the discussion on general warrants in the case of Wilkes, when the arguments for and against exceptional executive power were carefully marshalled, and notably in the years of Pitt's disabling and coercive measures after the French Revolution. In Britain, whenever gravity and urgency can be adduced in defence or in mere extenuation, there exists the favourable presumption that Parliament will stamp with its own approval the action of ministers by passing a bill of indemnity to legalise, in respect of the particular case, what in normal circumstances would be illegal. In a word, the merits of the case, of the specific exercise of authority, are made the determining factor. The presumption is in favour of liberty

—of the nation with its civil liberties : authority—the State—is on the defensive : it has to show cause for action that is exceptional, and must look to the common-sense judgment of Parliament and of the community, or to the play and force of party—the everyday court of appeal in politics.

The testimony of political thought in England coincides, in the main, with the conclusions to be drawn from political action. A pure political philosophy, in detachment from the conditions and the facts of politics, is not to be looked for appropriately in Britain. Rule of thumb has stamped its impress and its check—a check, on the whole, salutary—on the free and aspiring spirit of Truth. The best political thought in Britain (to the exclusion, as here irrelevant, of that, in itself valuable, of men who rank mainly as men of action in politics)—the political thought of Fortescue and Sir Thomas Smith,²⁰ Bacon and Milton, Hobbes and Locke, Burke and Bentham—bears on an actual constitution or on political problems, usually immediate and pressing, not merely on a polity ideal or distantly attainable. Similar, yet more striking, is the testimony of the average political mind of modern Britain—that drawn from regulars, irregulars and the mere skirmishers in political warfare. This we might establish by reference to the occasional political literature of Britain, in

tract, pamphlet and satire, during the long and fruitful century of political life and energy between our own Revolution and the French. The evidence of mere word or profession and the evidence of set purpose are, from this fertile source, the same. There are many 'seasonable' addresses, discourses and warnings; many attempts to make manifest and effective the 'plain' truth in 'plain' English; many assertions that the writer is 'just' or 'impartial' and knows and will tell the 'facts.' Even the mere asseveration—even the unwarranted assumption with its stratagem—has in many of such cases its index value for the estimate of mind and character.

What are the results of our survey when applied to Britain to-day?

The lines of politics are not straight lines, and they vary with the age. The line of Truth may be drawn straight by system-builders, and should be; that of political success is not so drawn, and can not be. Circumstance is often a tyrant, imperious, not to be escaped. Neither liberty nor authority can be autocrat. Neither, in the politics of history, has an immutable claim of right; and the terms of their compact are not inviolable. Liberty, in the ascendant in one age, has to make surrenders to authority in another age. The degrees of liberty, moreover, differ in the same

age in the various relations and conditions of the same political society. The same Government is called upon, from political necessity, to be at the same moment an upholder of liberty in one sphere, a stern agent of authority in another sphere. Not least in Britain must this be. Conditions of life, for the individual and for associated groups of men, are nowhere more varied, and nowhere more developed, than in Britain. But, further, with Britain is the British Empire—a complex structure, with interests and regulations of manifold diversity ; with many types of constitution and conventions of government, in a constitutional monarchy and parliamentary commonwealths, in self-governing dominions and Crown colonies, in dependencies and protectorates ; with English law and Scots law ; with Roman-Dutch law in South Africa ; with Mahometan law administered in British courts ; with French law as both before and after the Code Napoléon ; with customs so rude in some territories that there is need to enjoin that they are to be administered only in so far as not ‘repugnant to natural justice’ : this Empire of Britons is an unrivalled and exacting field for the caution and discrimination of comparative legislation and comparative politics : it has its delicate ground for lawyer and for legislator, for judge and for statesman. In such a realm of manifold interests and capacities there can be no

universal, no constant plea for liberty, none for authority. In an age of substantial democracy in Britain—substantial, even were the forms absent—concessions may have to be made to privileged knowledge, to executive and administrative needs, and to imperial exigency in the conduct of foreign policy, untrammelled by party prejudice, by excessive or inopportune publicity, by a too inquisitorial and captious spirit ; and yet Britain, as was affirmed three hundred years ago, ‘can never be undone except by Parliament.’ The democracies within the Empire, issue of the Mother of Parliaments and of Commonwealths, may not always trust each other. Like kings and like parliaments, the people have their distempers ; and their distempers are less easily controlled. May the remedial supervision of our crowned republic, with sentiment for home and for the Crown, provide, as under Victoria, and provide for long the necessary corrective ? And if a scheme of constructive imperial statesmanship must be forthcoming, will liberty have to make its concessions with a view to discipline, organisation and security, and make them for the strength and well-being of liberty itself ?

Such are problems of to-day and of the immediate future for the British people in Britain and beyond—great tasks and great responsibilities. As hitherto, there will be undesigned success as well as deliberate effort. There will be need of all the caution and

sagacity that have marked the best of British politics, and need probably of more imagination and prescience than can be attributed, with the confidence of history, to the British people and to British statesmanship.

POLITICS AS A PRACTICAL STUDY

‘For the more practical part of government, which is laws, I think good to note only one deficiency; which is, that all those which have written of laws, have written either as philosophers or as lawyers, and none as statesmen. As for the philosophers, they make imaginary laws for imaginary commonwealths, and their discourses are as the stars, which give little light because they are so high. For the lawyers, they write according to the states where they live what is received law, and not what ought to be law: for the wisdom of a lawmaker is one, and of a lawyer is another. For there are in nature certain fountains of justice, whence all civil laws are derived but as streams: and like as waters do take tinctures and tastes from the soils through which they run, so do civil laws vary according to the regions and governments where they are planted, though they proceed from the same fountains.’—BACON, *The Advancement of Learning*, book II. xxiii. § 49.

‘I think myself bound to give you my reasons as clearly, and as fully, for stopping in the course of reformation as for proceeding in it. My limits are the rules of law; the rules of policy; and the service of the State.’—BURKE, *Speech on the Economical Reform—Works* (1823), iii. 321.

WHEN we take politics as a subject of study, no aspersion is implied on politics in practice or the politics of the politician. Every student of politics

must try to come to know men and conditions as they have actually been in the past, and as they are in his own day : he ought to give heed to the warning of Spinoza. ‘ Philosophers,’ said this great thinker on politics, ‘ view the emotions by which men are affected as vices into which they fall by their own fault. They are accustomed, therefore, to laugh at them, to weep over them, to carp at them, and those who would be thought more pious seek to hold them up to abhorrence. When they do so, they believe that they are doing something divine and that they are raising themselves to the very height of wisdom, whereas the knowledge on which they pride themselves consists in much and varied praise of a human nature which does not exist anywhere, and in reviling that human nature which does really exist. The reason is, that these philosophers have interest in men not as they are, but as they would wish them to be, and hence in most cases it is not a true ethic at all they have written, but merely a satire upon human nature.’ ¹ It is on such account, said Spinoza, that of all the sciences or studies which have a practical application, the theory of politics has differed most widely from the practice.

We need not seek to prove the futility—sometimes it is the ponderous futility—of much of the thought on politics in the past ; but, while Spinoza’s charge is not unfounded, it is too sweeping. Aristotle,

for example—the father of thinkers in the science of politics, especially of those who do not despise practice—is always anxious to find an explanation of things and conditions as they are, as when he put forward his defence of slavery in the Greek City-State ; in his study of the State he is an early exponent, not indeed of the historical method, but of a method that has to make appeals to history and to comparative reasoning on politics ; and in his book on *Revolutions*, without losing touch with his own ideal for Society and the State, he is almost as objective as Machiavelli, almost as dispassionate and relentlessly suggestive as *The Prince* in statecraft. Thomas Aquinas and Dante carry us by different routes to the very heart of the medieval struggle between Papacy and Empire. Machiavelli—the exact antithesis of the type of thinkers to whom Spinoza's charge was intended to apply—enjoined men in matters of State to face the facts ; and from Machiavelli and Guicciardini, from their successors and imitators, and from Italian politics of the sixteenth century and the new-born diplomacy, there issued those collections of civil aphorisms, those entertaining maxims of statecraft, which were designed by their authors, compilers and editors to enlighten contemporaries or to fortify them on the nice boundary questions of profit and honesty in politics. But the study of politics as a science continued. It was largely

through contemplation of the wars of religion in France that Bodin was led to the necessity for the first clear definition of sovereignty²—a central conception in politics ; and, if we can succeed in combining the democratic foundations in the political reasoning of Bodin's critic, Althusius, with the fixed and absolute conception of sovereignty preferred by Bodin, we come to see the force of Spinoza's contention, in harmony with the true inwardness of political struggles of his age, that sovereignty is a relationship in which the rights and the powers of the many who are termed 'subjects' are as valid and essential as are those of the one or the body termed 'the Sovereign.' It is as impossible to view the politics of Hobbes—Spinoza's contemporary—apart from the Civil Wars of Charles I.'s reign³ as it is to estimate the *Civil Government* of John Locke without reference to the English Revolution.⁴ As to Hobbes, indeed, in spite of his intellectual strength and aggressiveness and his plea for hard sagacity, there may be a doubt whether his vast reading for many years and his persistent thinking for many produced any work of a typically English character—prudent in limits and fertile in inspiration for practicable schemes of action. Hobbes gained from having been a translator of Thucydides, 'the most politic historiographer that ever writ,' one from whose narrations the reader may 'draw out lessons to himself, and of himself be

able to trace the drifts and counsels of the actors to their seat';⁵ but, instead of lamenting, as he was himself disposed to do, the time he had given in his earlier years to the reading of comedies, we may regret that he did not appreciate human nature a little more humanly from reading them: we may almost adopt a conclusion of one of Hobbes's contemporary critics—Dr. Bramhall, the combative Bishop of Derry, author of *Castigations of Mr. Hobbes* and of *The Catching of Leviathan*:

'State policy, which is wholly involved in matter, and circumstances of time, and place and persons, is not at all like "Arithmetic and Geometry," which are altogether abstracted from matter, but much more like "Tennis-play." There is no place for liberty in Arithmetic and Geometry, but in policy there is, and so there is in Tennis-play. A game at Tennis hath its vicissitudes, and so have States. A Tennis player must change his play at every stroke, according to the occasion and accidents: so must a Statesman move his rudder differently, according to the various face of heaven. He who mesnageth a Commonwealth by general rules, will quickly ruin both himself, and those who are committed to his government. One man's meat is another man's poison; and those which are healthful rules for one Society at one time, may be pernicious to another Society, or to the same Society at another time. Some Nations are like horses,

more patient of their riders than others ; and the same Nations more patient at one time than at another. In sum, general rules are easy, and signify not much in policy. The quintessence of policy doth consist in the dexterous and skilful application of those rules to the subject matter.' ⁶

After the time of Locke, to some extent owing to his influence, but mainly owing to economic conditions and to material factors in problems of State, the better part of thought on politics had reference to utility : it has reasoned about degrees and objects in the equipment and agency of government, with a view to economic advance and social amelioration. Montesquieu more than Rousseau, and Adam Smith as much as Bentham, illustrate this disposition to bring thought on politics to bear upon actual conditions in society. Adam Smith's assertion that in a democracy the principle which prevails is that of utility,⁷ is a significant example of this practical disposition ; and those who have examined the catalogue of Adam Smith's library, or have endeavoured to trace the literary origins of such a section of his great work as that on the colonies, need not be reminded of the large proportion of books on history and the practice of politics—tools of the workman, not mere embellishments for a trifler—that went to the making of *The Wealth of Nations* ; and, recalling this, we may see something

of worth in the consideration, 'Politics as a Practical Study.'

There are three ways by which, whether separately or, by preference, conjointly, politics may be studied, and a political habit of mind may be formed or improved: first, the investigation of problems of politics of our own day, as an adequate and exacting enough pursuit in itself; second, the study of past politics; and, third, the study of the thought of the thinkers (who have not been also men of action—the men of affairs) in politics.

The first of these studies or investigations or branches of our study is clearly of the highest importance for a nation which has assumed responsibilities for other nations, and in which the determination of even the highest issues depends upon numbers—upon counting majorities, and not merely weighing opinion and judgment. A people cannot be too politically minded, for a people politically minded will accept restraints and know how and for what to submit to them; but it may come to be too much engrossed in politics—attracted too readily by phases, and swayed too easily by passions, in politics. It is too late, however, in Britain and in most of the States of the western world, to raise the warning cries, 'Too many politicians,' 'Too much politics.' It is the duty of the universities, of learned societies, of leaders

in politics, and not least, owing to present power, is it the duty of the press, to see that capacity and aptitude shall be as nearly as possible equal to civic demand and opportunity: it is their duty to see that there shall be developed in the community a national consciousness—the consciousness of being members of a community—and a sense of rectitude in politics which are the best safeguard of the State and the best security for each citizen—to see to it that life and energy shall be given to that higher ethical conception of the State which in the classic phrase is ‘prior to the individual’ because it is essential for his development in society. It is necessary to make of the people of a country a community.

Politics in itself—the State as such—knows nothing of party. But such a national sense in politics will, at least, strengthen the true party idea and elevate the thorough party man, since both are servants in the interests of the nation. A national sense of this character in politics does not come—nor can it stay—without toil and watchfulness. Conditions being what they are to-day in Britain, it may not come in one generation; and yet the gravest peril in our politics is, unhappily, a far-reaching one, namely, lest the general education of the great mass of the people—that kind of education which Government may not exact and cannot inspect—and especially their training in civic

disposition have lagged behind the developing range and nature of the problems in citizenship, with the solution of which the people are entrusted. When Lord Brougham and other reformers of his time used the expression 'the people,' they meant, as Lord Brougham was careful to point out, 'the middle classes, the wealth and intelligence of the country'—unable, it might be, to 'round a period or point an epigram,' but 'solid, right-judging men.'⁸ In accordance with a historically defensible interpretation of the constitutionalism of Britain—in keeping, at least, with its tendency (and constitutionalism is process, not result or consummation)—the politicians and the public mind of the nineteenth century made our democracy real in respect of the ultimate seat of sovereign power, and real and almost immediate without the limitations and safeguards contained in the written and rigid constitutions of other democratic States. Even those, however, who most approve of this acceptance of democracy may have their doubts regarding the equipment of the nation for the discharge of high civic duty in a manner commensurate with the highest civic rights. Yet the gravest crises of history have been produced by this very disproportion and incompatibility between situations, due to economic, intellectual and spiritual forces, and the equipment of the nation for coping with them. That is the tragic element in the study of

politics—the effort of a nation, or of a section of it, or of its rulers, made too late to reach the goal or to escape being overwhelmed. The shortcomings of a nation find it out.

In a democracy the people can initiate and inspire rule, and in large measure can control it, but even in a democracy the people do not themselves rule ; and there should be no political necessity, and it may not be materially and nationally beneficial, for the great mass of them to busy themselves with a particular and detailed study of problems of politics. All that can be asked of them—and it is much—is that there shall be some capacity for discrimination, such as is called for in the ordinary affairs of life, and a spirit of fair-dealing, so that the sense of civic responsibility may not be dormant nor be perverse. But, between the many who are electors and the few who, though seldom after ‘sifting and refining of exactest choice,’ are the nation’s elected, there is a large intermediate body of men, socially composite, and in some of its constituent elements unbounded in aspiration, zealous to do and not unwilling to dare. In respect of influence and opportunity, this body of men—not a class ; hardly a natural body—has now stepped, many-footed, into the place of the old middle class eulogised by Brougham and encouraged by Peel. For it the claim cannot be put forward, which by Brougham was put forward for the middle

class of his day, that 'if they have a fault, it is that error on the right side—a suspicion of State quacks, a dogged love of existing institutions, a perfect contempt of all political nostrums.' ⁹ Social and intellectual grading, interest and ideal—the failure of some to reckon with the force of interest, as of others to admit the appeal from ideals—make this body of men a body of many members, which no principles in politics can weld together, except in a preliminary confession of devotion to the general weal, and which no State policy will either harmonise or destroy. It is an intermediate class in the State of to-day, but is a class and is intermediate only in respect of knowledge possessed or merely vaunted, and of political power used by its members—power that should be respected and made use of by others.

The general education being assumed to be adequate, and the necessary interest in politics being granted, the investigation by the members of this body of even one of several great questions would be fruitful politically: the expediency and the equity of the claims advanced for trade unions; the scientific laws and injunctions determining how emigration is related to race and climate within the Empire of Britain; the strategic front of the British Empire—what it is and what it requires; the growth of 'nationalism' in Canada, and its bearings on the maintenance and strengthening of a political hope for all who are Britons; the con-

nection between 'imperial' ideal and economic faith in 1846,¹⁰ and the connection and their relative weight to-day. The study of the British Empire is in itself a comprehensive study: with every stage of civilisation represented within it, with its different sources and standards of law, and with its practical and decisive tests of economic principles and constitutional theories among peoples and amid conditions so varied as to render all political formulae liable to be questioned and uniformity in their application inconceivable or disastrous—an Empire thus constituted provides material for an exacting study. The study is a pertinent one; and yet how little understood—how much less understood by the bulk of the people at home than in the colonies—is even the cardinal fact, that only geographically does 'Britain' mean this island-home of ours; that it means politically the lands inhabited by the British people in homes chosen and established by them, whether here or in the younger Britains, and that the most important parts of the geographical 'Empire' for us and for the future of our race—Canada, Australasia, and parts of Africa—are not politically Empire at all.

It holds as a charge against all except a few in Britain that we are not diligent students of a number of Parliamentary Papers and Reports of undoubted value, published from time to time—such works of primary authority as those issued in 1893 dealing

with the conditions of life of the agricultural labourer in different parts of the United Kingdom, or the masterly reports on administration in Egypt under the régime of Lord Cromer ; or we rush to such reports, or permit others to rush and hurriedly think for us, when a question which has really been facing us for some time is, we say, sprung upon us, and being upon us has, to our dismay, to be grappled with. There was lately published a census of the British Empire as for 1901—the first census of the Empire in the extended official sense of the word ‘census’ in the report. It is a work of almost four hundred pages, built up, though not in worthy descent from Domesday Book, on many returns and reports for the several parts of the Empire, ‘ranging in bulk from a ten-page pamphlet concerning the 2,253 inhabitants of the Falkland Islands to an elaborate review extending to more than sixty volumes dealing with the manifold races of our Indian Empire, the population of which approaches 295 million persons speaking no fewer than 147 distinct vernacular languages.’ This census treats of the population of the Empire according to ages, of density of population per square mile, of conditions as to marriage, occupations, infirmities, religions, degrees of education. Even a glance at a report thus conceived and thus constructed, with certain trade and tariff reports in a not dim background, will serve to strengthen and enrich

our knowledge, while it may moderate the passion, or impair the widely acceptable attributes, of a peroration about the Empire. Much there is in such papers and reports to attract and to educate the genuine student of current politics.

But—it will be asked—how is the comprehensiveness of view or the steadiness in judgment to be attained that is necessary in considering a problem of politics or even in reading a Blue Book ? The assumption of general education and of interest in politics may not be deemed sufficient by the mind that is scientific or that is politically cautious ; and we are therefore led to seek aid from the two studies already mentioned—the two other departments of the study of politics—the aid of past politics and the aid of thought on politics. Surely, not least for the study of man in society—for the study of mind-in-action—there must be something from the past to help us and authorities to appeal to—authorities with a reason for the faith that sustains them.

By past politics we mean history—not the whole of history, but history in its most educative sphere. History gives to us the record and the interpretation of change in the life of man in society. It narrates events ; it appreciates the changes—examines the causes and the significance of the changes—whereby the present has grown out of the past. It discovers

conditions and reasons from them ; it weighs motives and interests ; it has to show why, in the conflict of judgments and the clash of interests, certain courses of life and action have prevailed, why others have been vanquished or have been made subservient, and—since we may not always sanctify ‘ success ’—how far there may be some virtue in what is rejected and, apparently, abandoned. History has to do with action, whence results a record of events ; and such is the narrow, yet ordinary, conception of history. It has to do with thought or idea as that which has produced or modified action ; and such is the fertile, but exacting, domain of history. The critical sphere in history is the sphere of estimate, not that of mere investigation and statement of facts or events—the display of externals ; and the task of estimating motive, action and result—the function of equitable moderator—is arduous in proportion to the variety and complexity of the conditions that influence or may have influenced action and have determined the effects of power. The truth of estimate—truth in estimate—is higher and more difficult to attain to than the truth of mere fact : the latter we can usually establish through wealth in the appliances of investigation, if there exists a sufficient wealth of material, for a process of mechanical accuracy ; the former—truth of estimate—results not merely from knowledge of definite

facts (what is done), but mainly from a weighing of not-definite power. Not merely the what (with its record), nor merely the how (with its exposition), but the why (in the history of ideas and at the time of action) and the whither constitute the main burden of the historian's task. Political stagnation—arrested development—is due usually to inertia of mind, the force of tradition, the enthroning of custom in authority: change is due to vitality of mind operating on relations of men to each other in social groupings and civic connections. History, however, as record does not reveal invariable correspondence between the actual facts, events or material conditions of an age and the predominant or distinctive thought or even the average mind or mental temper of the time. In a community, conscious of interests, and with differing sets of interests, it is just this conflict between facts and external conditions, on the one hand, and mind or tendency and aspiration, on the other, that transmits issues to a subsequent age, often precipitates a crisis, and has been the most persistently powerful cause both of revolution and of progress. Largely, progress has been due to protest.

The study of past politics is a practical study, and in its most practical endeavour it deals with situations. Whatever be the forms of government, and however laudable in themselves the aspirations and ideals of men, prudence is seen to be, as Burke

insisted, not only the first in rank of the virtues political, but the director of them all, their regulator and standard. Except in the elemental principles of right and wrong, consistency is not in itself a political virtue: time, place and circumstance are determining factors in material politics—in most questions of policy. The deliberate and frankly avowed expediency—or, to remove the opprobrium, let us say ‘practicalness’—of statesmanship, with its charter of right clearly drawn up for all succeeding time by Edmund Burke, is far removed from the ignobly calculating opportunism of the professional politician and the trimmer. ‘No manifesto’ in politics ‘or election programme,’ wrote Lord Acton,¹¹ ‘has the defining authority of a Shorter Catechism. . . . Theology differentiates towards exclusiveness, while politics develop in the direction of comprehension and affinity. . . . History does not work with bottled essences, but with active combinations; compromise is the soul, if not the whole of politics. Occasional conformity is the nearest practical approach to orthodoxy in politics, and progress is along diagonals.’ Yet every compromise of principle will be closely scrutinised, and, in particular, although even a vital principle has at times to be sacrificed, or, rather, has for a time to be suspended—although, for example, the State, with the salutary watchword, authority, may, in times of trial, have to come to the rescue

of the nation's energies for the nation itself, by imposing a check upon an ill-conditioned liberty—still, every plea of 'reason of State'—of Straffordism in fact against Hampdenism in principle—must stand out strong and incontestable before it is accepted. Tudor despotism was necessary and enlightened for a time and in the main; but the trials of the Stewarts were, in part, sufferings for the Tudors.

The result of study thus pursued is found in historical-mindedness—the disposition to examine the origins of a problem, the dispassionate review of the situation, and the appreciation of policy for its after-effects as well as its immediate consequences. For present politics that is the outstanding value of the study of past politics. That there may be historical analogies with existing problems is of importance secondary only: historical parallels are seldom exact, seldom complete: historical analogy is to be used with caution; and the detection of differences—the faculty of discrimination—is more profitable than the capacity to discover, and ingenuity in devising, similitude.

Yet much of the present meets us in the past. Two hundred years ago England had her education question—her ecclesiastico-educational question. It was deemed a grievance by Churchmen, as the Bishop of London remarked in debate in the House of Lords on the Schism Bill, that their children were

sometimes induced to attend the seminaries of Nonconformists. 'The Lord Halifax answered,' in the words of the *Parliamentary History*, 'that what they did was with the knowledge and consent of their parents, who, in many places, had not sufficient means to educate their own children: for which reason he moved, That since this bill was occasioned, as was suggested, by the dissenters endeavouring to ingross the education of the youth of both persuasions, they might be allowed schools to instruct their own children. This motion, being formed into a question, was debated near three hours. The lords Cowper and Halifax, the earl of Sunderland, and some other peers, made several speeches for the affirmative. But the lord Bolingbroke, the earl of Abingdon, and the lord chancellor, insisted on the negative, which was at last carried by 62 votes against 48'—by a majority equal to the number of peers whom party interests and some political necessity had impelled the Tory-Anglican ministry to induce the queen to create at one stroke. But by Committee amendments in the House of Lords, as against the general proposal that teachers be licensed by a bishop, it was agreed (1) that Dissenters might at least be suffered to have schoolmistresses to teach their children to read; and (2) that the Act was not to extend to any person who should instruct the young in reading, writing, arithmetic, or any part of mathe-

matical learning that relates to navigation or any mechanical art only.¹² When, in 1719, the Whig and Nonconformist 'Bill for strengthening the Protestant Interest' ousted from its place this Act 'to prevent the growth of Schism, and for the public security of the Church of England as by law established,' it was argued that the Act repealing the latter 'restores parents to their natural rights.'¹³

Or, again: in the King's Speech opening the session in the first year of the ministry of Walpole, it was claimed that nothing would more conduce to the extension of British commerce 'than to make the exportation of our own manufactures, and the importation of the commodities used in the manufacturing of them, as practicable and easy as may be; by this means, the balance of trade may be preserved in our favour, our navigation increased, and greater numbers of our poor employed.' Further, the importation of naval stores from the British colonies in America was to be encouraged, with these objects as declared in the King's Speech: to give a preference to these British settlements over foreign countries, and 'by employing our own colonies in this useful and advantageous service, divert them from setting up and carrying on manufactures which directly interfere with those of Great Britain.'¹⁴

Or, yet again, from the past for the present we might take the American Question—the most

important problem in the history of modern Britain for the British people to-day. Conditions, partly economic and constitutional, gave rise to a new problem in the statesmanship of Empire or of a Greater Britain, or broadened the character of a problem that was old. There was no considered policy at home in response to the demands of the new situation. The loss of the colonies was not 'inevitable,' but it was assured, partly by want of prevision—lack of the higher statesmanship—before the year of the Stamp Act and even (it needs to be urged) before the outbreak of the war with France in 1756, but largely and immediately by want of plan in policy—by lack of discerning, practical statesmanship—during the long period of ten years which elapsed, in a continuous war of words, between the passing of the Stamp Act and the firing of the shot heard round the world. Even in 1776, with its July the Fourth of sad or of glorious memory, there was only a slender majority of the colonists, if a majority at all, for Independence and extreme measures, and after careful investigation it is accepted that the Loyalists had a majority of the wealthier commercial men and of the professional and cultured classes. Thorough consideration of a problem like this raises us far above the politics of party, leads to the trial and condemnation of the politics of party on a question for which the parties were not constituted, and makes us realise the force

of the charge preferred by Edmund Burke: 'I think I can trace all the calamities of this country to the single source of our not having had steadily before our eyes a general, comprehensive, well-connected and well-proportioned view of the whole of our dominions, and a just sense of their true bearings and relations.' If we of to-day study that problem, not in Mr. Lecky's work only and in other works still more recent, nor in *Burke* and *Adam Smith* only (of high value, as secondary rather than primary authorities, though these are), but especially in the words and deeds of the men who had influence—primary movers and authorities like James Otis and Thomas Hutchinson, Samuel Adams and John Adams, Thomas Pownall and Joseph Galloway, as well as Grenville and Franklin, George III., North and Chatham—and if we were to examine the situation historically, in its steps and many changes, we should come to see the value of the right moment in policy, the insidious career of suspicion in politics—not least among kinsmen—the peril from inopportune claims to superiority and from national sentiment repressed and political hopes disappointed: how important is the economic motive in politics, and yet how, especially at great crises, it is of politics only a part, and that part not supreme.

Much we learn, even for definite application,

from past politics ; much also from thought—the thought of ‘ the thinkers ’—on politics. If we were to confine ourselves to recent thought and the thought of to-day, the first place would be assigned to the study of books on the administration of leading States and of the colonies and dependencies of those States, and, in conjunction with the history of the last century and a half, to works on economics, since no politician is now prepared to allege with Charles James Fox that Political Economy was one of the dodges of William Pitt. But for the wider range of politics which we have been considering the scientific mind imperiously demands the best of all the ages, and, it is to be feared, sometimes identifies the best with the most difficult. It is a great study—the study of the thought of able and earnest thinkers brought to bear on the agencies and methods of men for the attainment and furtherance of the highest human good.

There are some tests and, it may be, some needed precautions in the study. We ask of a writer : Is he mainly deductive and, as we loosely say, theoretical and ‘ philosophical,’ like Plato in large part, or mainly practical and, as we loosely say, ‘ political,’ as, in different degrees, Montesquieu and de Tocqueville, Alexander Hamilton, Machiavelli ? What are the antecedent influences on the thought of the writer, and what are the contemporary influences, aptitudes and preferences ?

What are the historical circumstances—the actual conditions in the life and politics of the time—and how far are they reflected in the thought of the writer, and how far accountable for his thought? What relation has dominant political thought, or the best political thought, in an age to action adopted, policy enforced? In Marsilius of Padua of the fourteenth century there is almost the same conception of a law-making authority as in John Locke of the seventeenth century, but in the equity of criticism we do not apply the same standard and tests to the *Defensor Pacis* as to the *Civil Government*. There is much in the best thought on politics that is relevant only to the time when it was expressed; much also there is that is fundamental and for all time. Ideals endure, and lessons from failure are fruitful; and, while very much of Aristotle's *Politics* is for the politics of the ancient City-State only, his teaching on democracy may have to be widely revived for the guidance—the control and the security—of the democracies of our own day.

Again, a writer's power of mind, especially his sagacity, is often brought out more in his reservations and in his statements by the way than in his main thesis or general theory: in his general theory, and in the form in which he clothes and presents his thoughts, he may be the servant, whether ready or unwilling, and the victim of his age, as in the

encumbering effect on some minds of doctrines of 'natural rights,' and of the 'origins' of society, and of a 'contract' in government. Rousseau did not say—or did not say only—'it may be necessary to force men to be free': he at once added, 'I mean free as in the civil State.'¹⁵ Rousseau, in his main reasoning in the *Social Contract*, was not writing of all States: he reasoned from and he required a small community, a well-instructed, enlightened community, and, with wise precaution, he himself said, that the supreme difficulty was that of instituting (rather than that of maintaining) the 'general will'—the *sensus communis* informed by Reason—because the social spirit which was looked for as the work—the result—of the institution would itself have to preside over, and give character and direction to, the institution: men previously to the right laws or right government should in disposition be what they were to become by means of these; for, were it not so, they might not recognise and accept the beneficence of the institution, the righteousness of the new order. Were all else in the *Social Contract* to be permitted to perish, its author's testimony to the political value of public opinion deserves to be imperishable: the chief guide to the legislator, he tells us, in words that link him with Montesquieu and de Tocqueville, even while he is of true kin to neither, is found in the manners and customs of the people, and above all in

public opinion—‘a guide unknown to our politicians, but one on which the success of everything depends, that which creates the real constitution of the State, that which keeps a people in sympathy with their institutions and imperceptibly substitutes the force of habit for that of authority.’¹⁶ An utterance like this requires to be adduced in justice to Rousseau, and must be reckoned with, when charges are made that as a political thinker he was merely a visionary and purblind. Moreover, the author of the idealistic *Social Contract* was author also of the expedient *Government of Poland*.¹⁷

Similarly, Harrington in his *Oceana* is not the mere dreamer he has seemed to many, or by many been assumed, to be—Harrington, who thought that Machiavelli’s books were unduly ‘neglected,’ who praised, as others have praised, Machiavelli’s book on the *Art of War*, and said that ‘he that will erect a Commonwealth against the judgment of Machiavelli is obliged to give such reasons for his enterprize as shall not go a-begging.’¹⁸ A republican, Harrington laid down forcibly the danger from the tyranny of majorities; and in his reasoning (or phantasy) he had as central argument a thought of profound significance, one which economists and politicians may duly appreciate—that dominion or power in politics tends to follow the balance of property, so that (it may be contended) the politics of Puritan republicans failed,

since the economics of the Puritans and of Englishmen could not be sufficiently democratic for their politics to succeed.

Again, in the history of thought—it is a truism, but apt to be ignored—we are dealing with mind—a complex structure—with type of mind, and, it may be, with several types, or elements contending for mastery, in one thinker. That has already been implied of Aristotle. But do we adequately consider that a favourite author of Machiavelli, with his idealism and mysticism as well as statecraft, was Dante ; that one of Spinoza's masters in politics, and perhaps the chief political influence upon him, was Machiavelli ; and that Rousseau said that *The Prince* of Machiavelli is a manual of republicanism ?

In general, we should never suppose, as was said by Coleridge, that we understand a man's ignorance until we are sure that we are not ignorant of his understanding. There is, too, a final particular precaution in the study of thought on politics : the point and force of application of a theory or a body of thought may undergo change—may even tend to defeat the purpose of the authority to whom appeal is made. Take a present-day illustration. Benthamism was intended to define and fortify Liberalism, and Bentham held that, in principle and as the rule, government—intervention by the State—is an evil : government should 'stand out

of the sunshine ' of industry, and in its incidence on life and conduct should be reduced to a minimum. But Bentham was also an advocate of the sovereignty of Parliament, and of a very wide franchise, and of measures of much-required legal reform. There is no essential logical connection between the greatest happiness principle and advocacy of the minimum sphere of government, and in historical fact, since Bentham's day and the day of the exuberant Liberalism of 1832, it is to the exercise of authority—to the use of the power of the State—that social reformers have had to look in promoting their measures. There was, in fact, a despotic element ¹⁹ in Benthamism—in Benthamite Liberalism politically applied. The school of the minimum function of government lost supporters and in its natural allies lost them: the utility principle seemed to require, in practice and for effectiveness, rather State power than loyalty to the principle of individual freedom; since 1832 the machine of administration in Britain, so sternly and, for his own day, with much justification denounced by Bentham, has been made both more complex and more suited to its work; and the driving force has been transferred to the bulk of the people—the wage-earners of the country—under the rule of majorities—to elements of the body politic that appraise constitutional forms and political rights, and are being taught and induced to appraise them, only as

opportunities for modifying and re-casting the economic and social body.

Is it possible, in but few words, to express part of the essential wisdom of the past for the present in politics? The book of the life of peoples must be written before the table of their public law can be drawn up, and in both the West and the East men may still have to pass through 'varieties of untried being.' But a legacy in politics there is from the past.

A constitution is not an end in itself and is not to be judged by its nearness to a theoretical perfection: it is tested by work—by its capacity to do work or to permit work to be done, and by its suitability to social conditions and by the readiness and safety by which it can be adapted to change in conditions.

The State viewed as government embodies the idea of authority, and as such is predisposed in favour of mechanism and routine: the nation—a people—embodies the idea of energies, of life and movement, and is predisposed in favour of liberty.

Liberty, in politics, is relative, not absolute, and must be conceived in relation to authority—may have to be expressed, and may best be defined, in terms of authority. The amount of liberty which a nation can bear, with the manner of bearing it, is one of the tests of a people and of statesmanship.

‘Power checks power’—Montesquieu’s fertile maxim : ²⁰ democracy, as a form of government, admits, in the practice of rule, no surrender nor claim of authority as against itself : democracy in practice makes for the organisation and concentration of power in favour of those who by numbers can command : liberty requires a division and distribution of power in accordance with rights possessed and possessions to be protected. Tyranny is not to be justified by the mere holding of the power, whether the holders be one, be few, or be many : especially where the many hold sway, the rights of minorities have to be protected : especially in a democracy, above rights have to be set duties : will and power are not to be set above right and justice.

FREDERIC WILLIAM MAITLAND

‘ DID the reader ever meet with a book intituled “ *Origines Literariæ* ; or a Treatise on the causes of Books, wherein is, by occasion, somewhat touched the effect which such grounds and causes have had on the frame and tenor of the works themselves ” ? I never did ; and I do not believe that there ever was such a thing ; but I have often wished that there had been. It would be a most curious and valuable addition to literary history.’ ¹

The appeal made by these words of Samuel Roffey Maitland is an embarrassing one ; but they are words that may fittingly introduce an attempt to record the work of his grandson, the late Frederic William Maitland, and to show reasons for gratitude for what has been done by him for the study of history and for the history of law and political thought.

In the year 1884 Bishop Stubbs gave his last statutory public lecture ² as Regius Professor of History at Oxford : in the same year Mr. F. W. Maitland published his first book, and delivered his first lecture as Reader in English Law at Cambridge. Maitland was then thirty-four years of

age. He had been Whewell Scholar at Cambridge, and had written a dissertation on English political thought from Hobbes to Locke. He was not successful in obtaining a Fellowship, and, having left Cambridge and become a barrister, he devoted time, which his profession allowed him, to the prosecution of historical study and the study of legal history. Maitland has himself told us that he found *Stubbs* in a London club, and read it 'because it was interesting': later, there were 'battered and backless' volumes that reminded him of 'happy hours and heavy debts.'³ In providing for the return of Maitland, through the institution of the Readership, Professor Henry Sidgwick was recalling to Cambridge one who was to be Stubbs's only worthy immediate successor in this country in the investigation of the problems of medieval England, and (it may at once be said) one who was to become the interrogator and supplanter of Stubbs in respect of some of the most difficult of them. In 1888 Maitland was elected to the Downing Professorship of the Laws of England in the University of Cambridge. When, forced away from England, he died in December 1906 at the age of fifty-six he was not known to a wide public. But that may be said of him which was written of Selden by a contemporary:⁴ 'He is honourably mentioned by many outlandish men'; and on each of his books we may write Selden's

own motto, *περὶ παντὸς τὴν ἐλευθερίαν*, 'to show that he would examine things and not take them upon trust.' Nor does any student of institutional history need to be reminded of the nature of the appeal made in a memorable Preface—that not without an effort can the history of institutions be mastered, or even approached, and that such study is not for the mind that needs to be tempted by the romantic and the picturesque to the investigation of Truth.⁵

About the year 1884 it seemed likely that England was to be deprived of, or was not to be allowed, pre-eminence in the study of her own legal history. The attack was being made from different quarters: Germany had claimed the study of Anglo-Saxon laws, and the claim has not been very seriously contested; in *Essays in Anglo-Saxon Law*, and in Mr. Melville Bigelow's *Placita Anglo-Normannica*, a collection of law cases from William I. to Richard I., and in his *History of Procedure in England*, 1066-1204, the United States of America had given proof of an aptitude and a vigour that are found matured at Harvard to-day; and in Professor Paul Vinogradoff, then of the Chair of History in the University of Moscow, but since, in rightful adjustment, annexed by England, Russia had a scholar of initiative and distinction who was engaged on the essential and fruitful study of the interdependences of law and economic fact

during and before the age of Bracton. England, it might well have seemed, was to be denied her own in her own heritage. But there were signs of strength and of self-assertion and of method in applying resources—even of method—in England herself. It was about 1884 that the full effect of Stubbs's teaching was being felt; and more than Maitland were discovering that their *Stubbs* was exceptionally 'well-documented'—that it was a treasure which, largely by its own liberal provision, they might expand, or, rather, parts of which they might themselves make more secure by assisting in an intensive pursuit of the 'attainable maximum of truth.' No one could have been more cordial than was Stubbs in 1884 in his welcome of fellow-workers. Besides, two definite grounds for hopefulness there were: the early economic history of England had begun to demand and compel its votaries, and Mr. Frederick Seebohm's *English Village Community* had applied a method⁶ as well as sought to establish conclusions; and, secondly, Mr. (now Sir) Frederick Pollock⁷ had been insisting on the importance of the study of English legal history for the understanding of past English politics; he had been emphasising the vastness of our opportunities and the grossness of our neglect, and he was himself interested, in almost equally generous measure, in the economic structure of early and medieval English society and in its legal

instruments and equipment. Readers of the *Note-Book* ⁸ may remember that it was from Sir Frederick Pollock that there first came to Maitland an interest in the history of law.

The history of English law was Maitland's study during the whole of his life of public activity, and his association with Sir Frederick Pollock resulted in one of the few unquestionable triumphs of British historical scholarship during the past generation. *The History of English Law before the Time of Edward I.* was published in 1895. Maitland had then been an author for eleven years: he had a second period of eleven years of research and authorship. Throughout at least these twenty-two years—in the period succeeding the publication of the great work of 1895, not less than before—Maitland was held by his subject. It gives us the centre and almost the circumference of his life; the problem of origins, of 'Origines Literariæ,' is to this extent not a difficult one. Maitland had many interests, but, with the exception of his *Life and Letters of Leslie Stephen*, practically none of his writings—whether elaborate treatise or learned essay, helpful introduction to a text, suggestive article, or concise review—was without bearing on his central object and achievement. It was a student's life *in unitate concordiae*.

In his first work—*Pleas of the Crown for the County of Gloucester* (for 1221), published in 1884,

and dedicated to Professor Vinogradoff—we see already a developed interest in Bracton and a rising interest in Azo (though he was not yet equipped to repel the ‘stupendous exaggeration’ against Bracton in *Ancient Law* ⁹), but, especially, we see already his faith in the importance of cases for the picture of medieval life they give, and for the light they throw on the organs of a section of the body politic; and, in implying that much of what is of interest to the student of the history of English law must be of interest to the student of English history also, he was already taking up a position in regard to both history and law that was consistently, during twenty-two years, upheld by him. In 1887 appeared *Bracton’s Note-Book* (in three volumes, two of them of text): *A Collection of Cases . . . annotated . . . seemingly by Henry of Bratton*. (‘We will call him Bracton,’ writes Maitland in 1895,¹⁰ ‘but in a hundred contemporary records he is Henry of Bratton or Bretton, and the corruption of his name seems to be due to scribes who copied his treatise after his death.’) *Bracton’s Note-Book* is one of the works on which rests the title of Maitland to distinction. It is right, however, that we should recall that which Maitland himself made very clear at the time ¹¹—that the discovery among the British Museum MSS., which led to the idea of connecting these cases with the material in judicial practice on which Bracton based his great work,

De Legibus, was Professor Vinogradoff's discovery (in the year of Maitland's first book). But the work of close investigation, of elucidation and interpretation, was Maitland's own. Moreover, it was wholly his own enterprise, although it was wholly appropriate to a Society's initiation and support, or to State encouragement and recognition, even in Britain. 'Perhaps I was not the man for the work ; but I have liked it well' :¹² there is much of Maitland in these words. The work had brought him into intimate and extended touch with the Middle Age at an era important in the outward conditions and relationships of life and in the growth of law and political thought. Maitland's best on Bracton had still to come, but there are twelve pages in the Introduction that show the qualities that mark him at his best. With this book his term of probation came to an end. In commenting on the influence of the *Note-Book*, through Fitzherbert, on Coke, he cannot restrain himself from assuring us that the history of English law will some day be written ;¹³ and in 1888, in his inaugural lecture as Downing Professor, he put the question, 'Why the history of English law has not been written.'

Already in 1887 definite action had been taken by a few of the learned in the cause of their learning : the Selden Society was founded. It was founded 'to encourage the study and advance the knowledge

of the history of English law,' and to do this by the publication of original documents and the reprinting and editing of works of historical value for its study. It may not be too much to say that this has been Maitland's Society. Not only was he one of the twelve to whom its foundation was due, but he has himself done about one-third of the actual research and writing set forth in the society's yearly publications, and as Literary Director he has informed, inspired and encouraged other contributors in their undertakings. In the history of the study of legal and institutional development in England the year 1887 holds the place held by the year 1857 in the history of historical study in general in this country; and the work of Stubbs in his *Rolls Series Introductions* has its parallel in the work of Maitland in his *Introductions to the Selden Society volumes*. The magnificent and wonder-working activity of Stubbs during the ten years 1866-76 is almost equalled by that of Maitland during the ten years 1888-98. We do not think of Stubbs and of the author of the *Constitutional History* and the *Select Charters* as an identity; nor thus of Maitland and the authorship of the *History of English Law* and *Domesday Book*. The official injunction or recommendation in the matter of *Introductions* was interpreted by Stubbs (all must concede) rather in the broad spirit of the historian than in the strict letter of the law; and there is much in these *Rolls*

Series Introductions by Stubbs that is unsurpassed in England for historical learning and historical writing. There seemed danger at first¹⁴ of Maitland taking a narrow view of the Introduction—a lawyerly interpretation merely—not the historian's, not his own. The Introduction to *Select Pleas of the Crown* (1200-1225)—the first volume of the Society (published 1888, 'for the year 1887')—gives the historical setting: it informs and explains, is compact and helpful; but in its brief twenty-four pages it lacks the sweep that Maitland sought and required for the display of his knowledge of an age, and for the exercise of his genius in style; and the notes, too (he trusted they were not 'impertinences'), might have been amplified. A liberal interpretation, however, prevailed. There resulted dissertations like Maitland's own, in succeeding volumes, and like that of Mr. Leadam on the Star Chamber—substantial and authoritative additions to historical knowledge.

It was one of the hopes of the founders of the Society that by the publication of the records of Courts and of other collections we should come to a better understanding of the economic condition and social life of England in the Middle Age. From the records much could be drawn that bore on the service and status of tenants in villeinage, on feudal tenures, on borough customs, as well as on the powers of justices and others, and

on the growth of forms at law. No allowance is made for the youth of the Selden Society when it is said that this expectation has already been bounteously fulfilled. No student of economic conditions or of institutional development, no student of the medieval law and history of England, can afford to neglect either the first-hand materials or the dissertations provided in the Society's publications. Maitland's zeal in his work for the Society—his zeal on this view of the work being done—culminated in his project of an edition of the Year Books of Edward II., of which he published three volumes. These early law reports, he had already written in a well-known passage, 'should be our glory, for no other country has anything like them; they are our disgrace, for no other country would have so neglected them.'¹⁵ Have not English lawyers been too modest in respect of what has been done by the science and the art of law in the true making of England? Even 'high technique' has had its part in that development—the making of the Englishman. Is not law the point where 'life and logic' meet?¹⁶ And some day will it not seem strange that men ever thought they could command a knowledge of medieval England and write its history without using and knowing the Year Books? Thus Maitland reasoned, and thus contended. We may deem it to have been a State concern to see to the issue of the

series of Year Books planned by Maitland, instead of the heavy burden being undertaken by a Society and by its leading member. Further, with Maitland gone, it is permissible to reflect that his knowledge might have been even more fittingly applied, and perhaps with less expenditure of energy during the last five or six years, to the editing of one or two writers and writings, such as the Society had in contemplation. Against all such doubts and reflections, however, must be set the character of the work done by him both in his scrupulous attention to his texts and in the Introductions of rare value which he wrote to the first and third volumes of the series. Maitland felt that this work on these early Year Books was his to do ; by doing part of it, he has directed how what remains should be done ; and he had become as keenly solicitous for the highest interpretation of English history as he formerly was for the writing of the history of English law.¹⁷

It is this emphasised connection between English law and English history that is the general merit of the *History of English Law* on which Maitland was engaged during the early years of his work for the Selden Society. Sir Frederick Pollock made it known that the book is mainly Maitland's. The association of these two authorities was, indeed, natural, happy and fruitful. Estimated by its inherent worth and by its results, the book takes

rank with Stubbs's *Constitutional History*. It confirms much, and it supersedes much, in that great work. The best part of the book is probably that which treats of the age of Bracton. In the same year as the book appeared, Maitland's *Bracton and Azo* was published for the Selden Society. It has been said of Mommsen that his monumental *History* seems almost to have been written for the sake of leading up to Cæsar : it would be a milder calumny to say that Maitland valued the whole range of his vast subject for the light that would be thrown on the 'crown and flower of English medieval jurisprudence.'¹⁸ All roads did not lead to Bracton ; but to Bracton we are very surely led. There is much in the book that is highly technical ; and in one of the latest Selden Introductions, that 'pray to be received,' we were told that high technique is to be admired at all times and in all places. There is much that is luminous, suggestive and creative by reason of mastery in high technique : many things the book has destroyed, many reconstructed—constructed in other wise. The command of technique, in combination with skill in exposition, asserts itself in the treatment of such subjects as seisin, knight service, and the place of contract in feudal society. On the lowest estimate the book has been of value in revising and improving our glossary for feudal or almost-feudal England ; but, far beyond that, it is to be esteemed for the

fresh setting given to English history in the century (at least) immediately preceding the Norman Conquest, and in the two centuries immediately succeeding that 'catastrophe.'¹⁹ For this critical period of English medieval history the book was required: it is hardly conceivable that there will be a displacement or a disturbance of *Stubbs* for the fourteenth and fifteenth centuries equal to that for the centuries to which Domesday Book gives a key, and from which its own key must be sought.²⁰ If we are led very surely to Bracton, and if our authors seem to be steeped in the law of the Angevin time, we must not charge them with the guilt of false perspective, without having their own contentions submitted, and without being ready to rebut them. They have sought to come to know that law as a law lived under, and to know it not only for itself, but as that from which they can work back as well as forward to the law of other ages: 'Our one hope of interpreting the *Leges Henrici*, that almost unique memorial of the really feudal stage of legal history, our one hope of coercing Domesday Book to deliver up its hoarded secrets, our one hope of making our Anglo-Saxon land-book mean something definite, seem to lie in an effort to understand the law of the Angevin time, to understand it thoroughly, as though we ourselves had lived under it.'²¹

With hardly an exception, the remaining works

of Maitland, and not least the Selden Introductions to which reference has been made, are (we may say) satellites of the *History of English Law*, if, indeed, one should venture to say of any writing by Maitland that it has the obsequiousness of a satellite, even when he is merely 'introducing' a foreign thinker whom he has himself translated. Of more than one of these works he has himself told us that something only partly said in the *History*—the desire to say that something better—impelled him to write and to speak out. These were his excursions and incursions. Thus, *Roman Canon Law in the Church of England* developed learning and an interest already strongly revealed in the discussion of the Constitutions of Clarendon and of relative questions in the *History*. Also—or, by consequence—it combated fundamental positions advanced by Stubbs in his valuable historical Appendix to the Report of the Ecclesiastical Courts Commission—an Appendix for which its author claimed in 1884 that it was 'true history' as well as 'the result of hard work.'²² The chapters omitted by ecclesiastical historians were just those Maitland wanted. His own surveys of the ecclesiastical jurisprudence of England in the later Middle Age—his inquiry into conceptions and realities of law administered in English Church Courts from the Norman Conquest to the Reformation—gave to his conclusions a special force when he came to

the cutting of 'the very life-thread of the old learning' ²³ by Henry VIII. and to the beginning of the statutory Reformation in England with an Act ²⁴ aimed at Canterbury, not at Rome. In the Rede lecture, *English Law and the Renaissance*, rich in allusions and of high value for its notes, in his *Elizabethan Gleanings*, and in his chapter in the *Cambridge Modern History* on the 'Anglican Settlement,' he further applied this accumulation of historical interest from the Middle Age. A dissenter from all churches, he had no prejudices; and, like one or two of the great medieval minds in politics, he has known how, by protest, to make progress in knowledge.

In *Domesday Book and Beyond* Maitland has given us an almost necessary supplement to the *History of English Law*. Its author—an excellent spirit in controversy—would himself have constituted Professor Vinogradoff and Mr. Round a Supreme Court, but, although some of its central conclusions have been questioned, it is Maitland's ablest—rather than most influential—piece of independent work. It embodies much of the learning and the thought of one who, for a number of years, had been putting questions regarding the relation between land and military service, regarding the meaning and changes in the meaning of the manor, regarding seignorial justice. The epithet 'brilliant' seems colourless as applied to Maitland, but at least it will be con-

ceded by all ; and of Maitland's works his *Domesday Book* is the most brilliant—the most brilliantly Maitland-like. 'Brilliant' may mislead. The concentration of the investigator ; command of method ; zest in the search—in the chase (may we say ?), with the scent difficult ; skill and delight in analysis ; delight and genius in the resulting, though merely tentative, synthesis : these are all revealed in *Domesday Book*. And the manner in which they are displayed may make us doubt whether the book has its equal in the English language for the investigation and exposition of technical problems of the most difficult character.

It is not easy for any one but an author himself, and, often, even for him not easy, to tell of the growth of his own ideas and capacities—to know the history, for example, of the growth of his historical knowledge and historical aptitudes. In the case of Maitland it is less difficult, probably, than in the case of others of wide learning. In his later years, when he had himself much to give, it is probable that he received most from Professor Otto Gierke. On this account, it may be, the wise counsel of Professor Sidgwick²⁵ was the more readily adopted ; and the result was not only the translation of a part of Dr. Gierke's *Das deutsche Genossenschaftsrecht*, but its introduction to English readers by means of a disquisition (it is hardly the right word for Maitland) for which the exponent

of *persona ficta* in the *History* was himself already in large degree equipped, but the quality of which was an increased testimony to Maitland's learning and skill in the realm of historical thought on law and politics. Few distinguished foreign scholars have been introduced in a way so scholarly and distinguished.

Just as a great Power has 'no little wars,' so in history we do not nicely discriminate between the petty and the weighty when advances are being made in knowledge. There was no 'right of appeal' ²⁶ to Alfred the Great (nor was the year of his death the year we were taught at school ²⁷). Professor Vinogradoff has deprived us of our folk-land: ²⁸ he has interpreted for us a folk-right that has taken from the folk its land. The England of the day when Edward was 'quick and dead' is not yet fully known, but is better known now than when Mr. Eyton gave his 'key' to Domesday.²⁹ We have become critical and suspecting whenever numbers face us in the Middle Ages, and especially intolerant of '*LX. millia*': we no longer bring 60,000 land-holding men to Salisbury Plain—no longer transgress with Ordericus Vitalis and with Mr. Green's trustful legions: ³⁰ the number of knights' fees in England has been diminished, though not arbitrarily, yet ruthlessly. Mr. Round even more than Professor Maitland has transformed our ideas of knight service.³¹ Much of our *Freeman*

has been discarded, much especially of Freemanism. We have had pressed upon us the central importance of the *cartae* of 1166,³² in spite of their non-appearance at first and their diminutive appearance still in the *Select Charters*, and we are not likely either to antedate the *vetus feoffamentum* or to misconstrue *super dominium*. In our study of Magna Carta³³ we have become less enthusiastic and rhetorical over *legale iudicium parium*³⁴ and over *lex terrae*,³⁵ and yet more genuinely interested in them ; and we are as much concerned to-day with the interpretation of clause 34³⁶ in the document of 1215, and with the significance of the powers of distraint conditionally conferred against the king, in behalf of the Crown,³⁷ as we were formerly with the historic essential clauses. We do not forget that as long ago as in the second Selden volume Maitland had himself declared of Magna Carta that it is a document in which retrogressive are mingled with progressive clauses.³⁸ In the making of these and similar advances he has taken a leading part. He has not fought, ventured and been victorious, without terms and surrenders : Mr. Round has been watchful (but in a common allegiance), and in Professor Vinogradoff's recently published *Growth of the English Manor*,³⁹ especially in the notes, there are considerations that directly affect the author of *Domesday Book*. More, however, than particular advances do we owe to Maitland, although

it was by care for particulars that he built up his great contributions and attained to his point of view. We think of him at once when we endeavour to assign to seignorial justice its due place among the features of feudalism ; when we are chary in the use of the expression ' feudal system ' ⁴⁰ (before the age of great lawyers and their systematising proclivities and labours) ; when we hold the language of enfeoffment appropriate in 1215 ; when to the year 1285—an already overburdened year—we ascribe a new event which ought to make it memorable in English history ; ⁴¹ or when, in our study of the ecclesiastical jurisprudence and of the fundamental politics of the Middle Ages, we say of the Church that it was a State.⁴² We owe to him a wider and more nearly just perception of ' interactions and interdependences ' in the Middle Ages. He was a great medievalist. But that he was not merely a medievalist there is sufficient in his writings to enforce ; and not the least earnest, and therefore eloquent, passages in his books are those in which he appraises the knowledge of law and institutions in the making by its suggestiveness for us to-day, and thinks, with misgivings, like his chief fellow-worker, of the problems of law and government for our ' complex and loosely-knit British Commonwealth.' ⁴³

Many know Maitland by his style, and cherish him for it, who find his subjects forbidding. By

his style he took from his subjects much of their forbidding character. The subjects were born again in his hands. In general, the style has more of the man than of the subject, as style for the subject has prevailed or been ordained ; but it may be that history is by too many regarded as one instead of several, and that historical style has suffered, of late, by repression in consequence. Maitland was himself a keen and critical student of language ; he gave ample proof, of an accepted kind, in his elaborate study of Anglo-French ⁴⁴ in one of the Year Book series. Our language seemed to him 'fluffy.' He tried to gain precise ideas, and to express them precisely ; but he was an artist in words for true effect, not a precisian. His fulness of knowledge and alertness of mind have a style, a literary expression, in correspondence : he carries his thoughts through ; he admits refinements, abounds in surprises, and is rich in allusions. Therefore, his style is not a style uniformly sedate and severe : it is not docile, not conventionally decorous : it is far from prudish. But he made the English language an exceptionally fit instrument for his purpose ; and much of the 'irregularity' is due to his own delight in work—perhaps also to a desire to communicate that delight. It would really have been happiness to him to know where in England is the 'very most ancient roll.' He enjoyed the sarcasms and the oaths of Bereford, C.J. He

liked the lawyers of the early years of the fourteenth century—men ‘not of the sterile caste’—gregarious and clubbable men; and wished others to know and like them also. When the author of some marginal glosses (*temp.* Edw. I.-II.) on Bracton’s text says,⁴⁵ ‘In Anglia minus curatur de iure naturali quam in aliqua regione de mundo,’ Maitland (knowing something of the history and manœuvrings of Natural Law, and something of England) could not becomingly have been silent in his delight. Yet Maitland, without being magisterial in style, can be masterly, as in *Domesday Book*,⁴⁶ when he presents his ten-point summary in favour of the large hide, or is arguing in the same work against hastily formed ideas of corporate, or quasi-corporate, ownership of village communities. Moreover, his apparent recklessness in style is often the result of wide knowledge readily at his service, and of his liking for allusions, as if we had all been with him wherever he had been: for example (not an extreme one), when he says in the chapter ‘The Anglican Settlement and the Scottish Reformation,’ ‘What had “come with a lass” might “go with a lass,” and was in no wise mysterious,’ these last words meant much to Maitland, and much to those who had been with him in England in the days when the king was merely ‘prerogative’ (*praerogativus*),⁴⁷ when prerogatives were not yet defined, and when *corpus politicum* was being set against *corpus*

naturale : he was writing (in the *Cambridge Modern History*) for the cultured many, and not merely (as in *Social England*) for the many cultivable.

Those who have welcomed Maitland's books year by year, as they have appeared, will have much that they can never forget for the manner as well as for the idea. We do not forget how children should still say their shires (if the shire is to maintain the burgh, and the burgh defend the shire),⁴⁸ nor that the first match between Oxford and Cambridge (as Oxford was told) was a 'lying match,'⁴⁹ nor the new and happy *et caetera* in the title of Queen Elizabeth,⁵⁰ nor that the queen was 'an artist to the finger-tips';⁵¹ we do not forget the direction of 'the stream of political theory, when it debouches from the defile of the Middle Age into the sun-lit plain';⁵² and who can forget how, long before Arundel burnt Sautre, 'Langton burnt a deacon who turned Jew for love, and the love of a Jewess?'⁵³ There will be individual preferences. But there will be those who think most frequently of the words on the 520th and last page of *Domesday Book*, coming after much inquiry made, many questions put, and some answers given :

'However, we would not end this essay upon a discord. Therefore a last and peaceful word. There is every reason why the explorers of ancient English history should be hopeful. We are beginning to learn that there are intricate problems to

be solved, and yet that they are not insoluble. A century hence the student's materials will not be in the shape in which he finds them now. In the first place, the substance of Domesday Book will have been rearranged. Those villages and hundreds which the Norman clerks tore into shreds will have been reconstituted and pictured in maps, for many men from over all England will have come within King William's spell, will have bowed themselves to him and become that man's men. Then there will be a critical edition of the Anglo-Saxon charters in which the philologist and the palæographer, the annalist and the formulist will have winnowed the grain of truth from the chaff of imposture. Instead of a few photographed village maps, there will be many; the history of land-measures and of field-systems will have been elaborated. Above all, by slow degrees, the thoughts of our forefathers, their common thoughts about common things, will have become thinkable once more. There are discoveries to be made; but also there are habits to be formed.'

There is the Maitland we know and revere. But there is really no other Maitland: liberty came by inheritance to the grandson of the author of *The Dark Ages* and of the *Essays on the Reformation*, and liberty in unwonted measure is readily conceded, if need be, when an author, personally immune through self-equipment, can disport himself amid

entanglements—amid what to others are fatal entanglements.

It will be asked whether Maitland is a great historian. But he did not set out to be a Gibbon, or a Mommsen, or a Ranke. His subject is not as wide as that of Stubbs. But he has the marks of a great historian. He has a broad and inspiring conception of history. He knows much of the things that are of consequence in life and in history, that 'count,' and yet are with difficulty reckoned. He is not given to system-making, but he is persistent in the search for sequence, and not over-ready with his co-ordination. '*Pour un jour de synthèse, il faut des années d'analyse.*' He did not readily fall back upon the aid of national character or the genius of a people, which, as he said, stands at the beck and call of the historian. He was more eager to detect differences than prone to reason from and emphasise resemblances: he did not look for a portable village community. A 'Natural History of Institutions' ⁵⁴ is an alluring historical and literary goal, but we should be very careful that our natural history is not to real history as is natural law to actual law. He had historical imagination, but he insisted on the test of particulars: the 'condition-of-England' question may have to be answered from account rolls. He was liberal in the use of words in exposition and for refinements; he was exact in definitions, for essen-

tials: instead of feudalism there may be merely vassalism; instead of saying, the Lateran Council abolished the ordeal, let us say, it made the ordeal impossible by prohibiting the clergy from taking part in the ceremony; and for 'Erastianism,' to express the ecclesiastical theory of Henry VIII., should we not substitute 'Marsilianism,' or, better, 'Byzantinism,' the *Cäsaro-Papismus* of Byzantium? ⁵⁵ With his material under command, and regardful of distinctions, he is a master of the process of proof in difficult undertakings. We see not only what we are to know, but how we come to know it. We are given the raw material, and we work, with the worker himself, towards the finished product or the 'attainable maximum.'

Professor Maitland died at the height of his powers, when he had subjected much to himself. Much there is left to be done that he could have done best. He might have given us a history of liberties in the Middle Ages. He could have commented with illumination, in a history of political thought, on Marsilius's definition of '*legislator*' ⁵⁶ (with its recognition of the majority in politics, of which Maitland desired a history), or on Bodin's distinction between sovereignty and administrative authority, ⁵⁷ or on the qualification imposed by Gentilis on Bodin's exposition of liberty in religion. ⁵⁸ With the aid of *Gierke* he could effectively have laid bare the origins of the politics of George

Buchanan. He could have introduced others than Bracton. He has not even left us anywhere clear and complete his picture of medieval England.⁵⁹

Maitland may not be one of the great historians : there are few. But his is the finest intellect of the nineteenth century devoted to the study of English history, and to that study in its most exacting claims.

NOTES

BACON, MILTON, LAUD

¹ See Gierke, *Political Theories of the Middle Age*, translated and edited by Maitland.

² 'In the first place [with the Reformation in England] we have come upon what must be called a sudden catastrophe in the history of the spiritual courts. Henceforth they are expected to enforce, and without complaint they do enforce, statutes of the temporal legislature, acts of the English parliament. Henceforth, not only is their sphere of action limited by this secular power—that is a very old phenomenon—but their decisions are dictated to them by acts of parliament—and that is a very new phenomenon.'—Maitland, *Roman Canon Law in the Church of England*, pp. 90-1. See a criticism of part of Maitland's contention by Ogle, *The Canon Law in Mediæval England*.

³ Albericus Gentilis, *De Iure Belli*, c. x.

⁴ See Strype, *Life of Parker*, bk. II. ch. xix.

⁵ See Prothero, *Statutes and Constitutional Documents*, 1558-1625 (3rd ed.), pp. 198-9, for additional extracts, although the important words, 'which things . . . themselves,' are omitted.

⁶ 'The worst was, these two preachers, though joined in affinity (their nearest kindred being married together), acted with different principles, and clashed one against another. So that what Mr. Hooker delivered in the forenoon, Mr. Travers confuted in the afternoon.' Whereas, at the building

of Solomon's Temple, 'there was neither hammer nor axe nor any tool of iron heard' (1 Kings vi. 7), in this Temple, continues Fuller (*Church History*, bk. ix. sect. vii.), 'not only much knocking was heard, but (which was the worst) the nails and pins which one master-builder drove in, were driven out by the other.'

⁷ 4to, London, 183 pp. At the very outset of his work Bancroft associates contempt of government—'lewde conceites'—in civil interests with its contempt in interests ecclesiastical, and, while he utters warning against 'the develish and traiterous practises of the Seminary Priests and Jesuites,' he is more especially concerned, as the title of the work requires, with 'the lewde and obstinate course, held by our pretended refourmers, and Consistorian Puritanes' (pp. 2-3).

⁸ Gratias agamus Machiavello et huiusmodi scriptoribus qui aperte et indissimulanter proferunt quid homines solebant, non quid debeant.—Bacon, *De Augmentis Scientiarum*.

⁹ Speech in the Parliament of 1601 for repealing superfluous laws (Spedding, *Letters and Life*, iii. 19). Cf. Hobbes (whose politics have much in common with those of Bacon, whose secretary he was for a time), *Leviathan*, ch. xxx.: 'A good law is that which is "needful" for the "good of the people," and withal perspicuous. . . . Unnecessary laws are not good laws, but traps for money, which, where the right of the sovereign power is acknowledged, are superfluous, and, where it is not acknowledged, insufficient to defend the people.'

¹⁰ 'Administratorem, procuratorem, gubernatorem iurium maiestatis principem agnosco. Proprietarium vero et usufructuarium maiestatis nullum alium quam populum universum in corpus unum

symbioticum ex pluribus minoribus consociationibus consociatum. Quae maiestatis iura adeo, meo iudicio, illi consociationi propria sunt, ut etiamsi illa se his velit abdicare, eaque in alium transferre et alienare nequaquam tamen id possit, non minus quam vitam suam qua quis fruitur alii communicare potest.'—Althusius, *Politica, Praefatio*.

For Althusius's difference from Bodin see especially ch. ix., e.g.: 'Quod si igitur etiam secundum Bodinum duplex est maiestas regni et regis, quaero, utra ex hisce sit altera maior et superior? Negari non potest illam maiorem esse quae alteram constituit, quaeque immortalis est in subiecto suo, populo scilicet, et alteram minorem, quae in unius persona consistit et cum eadem moritur.'

¹¹ 'Certain Considerations touching the better Pacification and Edification of the Church of England' (Spedding, *Letters and Life of Francis Bacon*, iii. 108-9). The whole paper is worthy of attention.

¹² II. xxv. 9.

¹³ *Works* (Spedding, vii. 647).

¹⁴ Speech at the opening of Parliament, 19th March 1604.

¹⁵ See *Letters and Life*, iii. 128.

¹⁶ Spinoza's position on the question of freedom of thought and speech is thus summed up by him (*Tractatus Theologico-Politicus*, c. xx.): 'Ostendimus I. impossibile esse libertatem hominibus dicendis ea quae sentiunt adimere; II. hanc libertatem, salvo iure et autoritate summarum potestatum, unicuique concedi, et eandem unumquemque servari posse, salvo eodem iure, si nullam inde licentiam sumat, ad aliquid in rempublicam tanquam ius introducendum vel aliquid contra receptas leges agendum; III. hanc eandem libertatem unumquemque habere

posse, servata reipublicae pace, et nulla ex eadem incommoda oriri quae facile coerceri non possint; iv. eandem salva etiam pietate unumquemque habere posse; v. leges quae de rebus speculativis conduntur inutiles omnino esse; vi. denique ostendimus, hanc libertatem non tantum servata reipublicae pace, pietate et summarum potestatum iure posse, sed ad haec conservandum, etiam debere concedi.'

¹⁷ *Tenure of Kings and Magistrates.*

¹⁸ *Iconoclastes*, Preface.

¹⁹ *Ready and Easy Way to establish a Free Commonwealth.*

²⁰ From a sonnet.

²¹ *The Reason of Church Government urged against Prelacy*, bk. i. ch. iii.

²² *On the New Forcers of Conscience under the Long Parliament.*

²³ *Tenure of Kings and Magistrates.*

²⁴ *Areopagitica.*

²⁵ *The Reason of Church Government urged against Prelacy*, bk. i. ch. iii.

²⁶ *Of True Religion, Heresy, Schism, Toleration.*

²⁷ *A Treatise of Civil Power in Ecclesiastical Causes.*

The following words (*Of Reformation touching Church Discipline in England*, bk. ii.) present the central argument in Milton's reasoning on the general problem of Church and State: 'If, therefore, the constitution of the Church be already set down by divine precept, as all sides confess, then can she not be a handmaid to wait on civil commodities and respects; and if the nature and limits of Church discipline be such as are either helpful to all political estates indifferently, or have no particular relation to any, then there is no necessity nor indeed possibility of linking the one with the other in a special conformation.'

AN AMERICAN-INDEPENDENCE GROUP

¹ *Considerations relative to the North American Colonies* (1765 ; 48 pp.).

² *The Life of Benjamin Franklin written by Himself*, ed. by John Bigelow (2nd ed. 1879), i. 302.

³ Owing to his capacity and the experience he had had as a governor and administrator in Massachusetts Bay, South Carolina, and New Jersey, Pownall's knowledge of the sentiments and the interests of the colonists was probably not surpassed at this time (1764) by that of any other Englishman. His *Administration of the Colonies*, Part I. (131 pp.) and Part II. (1774, xi+171 pp.), is indispensable as a primary authority on the American Question. 'The several changes in interests and territories,' writes Pownall, 'which have taken place in the colonies of the European world on the event of peace, have given a general impression of some new state of things arising' (*Op. cit.*, pt. I. 1). 'While each country supposes, that its own government actuates and governs the trade of its respective subjects and dependencies, there is in fact a general kind of *lead in commerce*, *distinct from any* of the governments in Europe, that flows in its own channel, and is held in motion by the laws of its own nature' (p. 4). 'It is now the duty of those who govern us, to carry forward this state of things, to the weaving this lead into our system, that our kingdom may be no more considered as the mere kingdom of this isle, with many appendages of provinces,

colonies, settlements, and other extraneous parts ; but as a grand marine dominion, consisting of our possessions in the Atlantic and America united into a one interest, in a one centre where the seat of government is. As the rising of this crisis . . . forms precisely *the object* on which government should be employed ; so the taking leading measures towards the forming all these Atlantic and American possessions into a one dominion, of which Great Britain should be the commercial centre, to which it should be the spring of power, is the *precise duty* of government at this crisis' (p. 6). Pownall argues, not for an abandonment of the claims and interests of the mother-country commercially, but for an extension and liberalising of the whole commercial system (see especially pp. 115-17), and for a revised and carefully designed administrative system with fewer restrictions, or with restrictions of a less inappropriate kind, than were then being resented : restrictions would be less irksome, if the colonists could be brought to feel that they were true members of the 'commercial dominion.' The union of the colonies was improbable : in this respect nothing was to be feared by Britain if only there were no 'tampering activity of wrongheaded interference' (p. 34). But there was need of 'some general system of administration . . . some plan of which should be (whatever may be the changes of the ministry at home, or in the governors and officers employed abroad) uniformly and permanently pursued by measures founded on the actual state of things as they arise' (p. 9). In 1774 (the year before the second great crisis, as Part I. had been published the year before the first) Pownall's own view of his liberal-mindedness in tone and reasoning ten years earlier went a little beyond the facts, but his earnestness

had come to be even deeper, and he pointed, as Franklin and others pointed, to a leading cause of the disastrous policy pursued towards the colonies in the baneful operation of the rivalries of 'connexions' and the interests of party men. 'I own,' he says, 'I was in hopes [in 1764] that that true system of efficient government, founded in political liberty (which all seemed to possess *here*) might be established in the colonies: I was sure, from the temper and genius of the people in America (as they were when I knew them), it would be nourished and maintained *there*. I have had the chagrin to find, on the contrary, that from the moment in which American affairs became the object of politics in this island, they became the tools and instruments of parties: they have been taken up and acted in only on party views, on party considerations' (p. 3). Like Edmund Burke, Pownall lamented the absence of plan and consistency from measures adopted: there was a lack of comprehensiveness and of imagination. 'I wish,' he wrote, 'the government of this country to define its own rights; and standing on that sure ground, to acknowledge those of others. I wish the people of America, as they love liberty, so to honour true government, which is the only basis on which *real liberty* can stand: *and in that line to see peace*' (pp. x-xi). For twenty years a British Union, with colonial representatives admitted to the Parliament in Britain, had been recommended repeatedly by 'those who knew the circumstances of both countries.' But 'this interesting and decisive crisis of the affairs of this country, wherein a British Union might have been formed, has been treated like Friar Bacon's brazen head in the puppet show. The nation, whom it concerned to watch it, slept while it pronounced

"Time is to come"; "Time is." They are awakened now with the breaking-up of the charm, and have only heard "Time's past." The colonies now in their turn have learnt to renounce this union. To obviate even the offer of it, they previously reject it: they say it is impracticable, and will not hear of it' (p. 83). There follows (pp. 84-6) one of the most statesmanlike utterances on the American Question: 'If our colonies by any new-excited property of attraction amongst themselves, are drawing together in an *American Union*: if we find this American attraction to be *electrical*; having learnt how this is raised by friction, we should know that the application of force will the more increase its power. If this, then, be the case . . . if Great Britain and the colonies are come to that dreadful crisis, that they are no longer to remain *on their old standing*: if there cannot be a *British Union*: may the Americans see and be convinced, that the safest and happiest form of an *American Union*, is that, whereof a British Stadtholder, Lieutenant of the Crown, may have the lead, command and government, under such establishments as derive from pre-conceived *modes of policy*, before it shall be driven on *by force*! And may Britain have the temper, the spirit, and the wisdom *to take such lead*.'

⁴ *The Rights of the British Colonies Asserted and Proved*, by James Otis, was published at Boston in 1764. As reprinted in London (? 1765) it is a work of 120 pages. Pages 3-35 consist of an introduction on the origin of government; pages 35-8 treat of colonies in general; pages 38-47, of the natural rights of colonists; pages 47-99, of the political and civil rights of the British colonists; and pages 100-20 consist of an appendix. The notes of the work are its moderation and, in parts, its

grand seriousness: it has the note of passion restrained by the writer's consciousness of the gravity of the problem. Indebted in large measure (like almost all the writers for the colonists) to the reasoning of Locke, but not merely submissive to him, Otis finds in four fundamentals 'the first principles of law and justice and the great barriers of a free state, and of the English constitution in particular': government must be by stated laws; the end of these laws must be ultimately the good of the people; 'taxes are not to be laid on the people, but by their own consent in person, or by deputation'; and 'their whole power is not transferable' (p. 55). 'To say the parliament is absolute and arbitrary, is a contradiction. The parliament cannot make 2 and 2, 5: omnipotency cannot do it. The supreme power in a state, is *jus dicere* only: *jus dare*, strictly speaking, belongs alone to God' (p. 70). On both the commercial and the more highly political aspect of the problem, Otis sounds a note of warning. He was sure that the colonies had 'the natural means of every manufacture in Europe, and some that are out of their power to make or produce. It will scarcely be believed a hundred years hence that American manufactures could have been brought to such perfection, as they will then probably be, if the present measures are pushed. One single act of parliament,' he adds in significant words, 'has set people a-thinking, in six months, more than they had done in their whole lives before' (pp. 81-2). And yet 'the ministry, in all future generations, may rely on it, that British America will never prove undutiful, till driven to it, as the last fatal resort against ministerial oppression, which will make the wisest mad, and the weakest strong' (p. 77). He summed up his argument

as follows (pp. 98-9) : that ' civil government is of God ' ; ' that no parts of his Majesty's dominions can be taxed without their consent ; that every part has a right to be represented in the supreme or some subordinate legislature ; that the refusal of this would seem to be a contradiction in practice to the theory of the constitution ; that the colonies are subordinate dominions, and are now in such a state, as to make it best for the good of the whole, that they should not only be continued in the enjoyment of subordinate legislation, but be also represented in some proportion to their number and estates in the grand legislative of the kingdom : that this would firmly unite all parts of the British Empire, in the greatest peace and prosperity, and render it invulnerable and perpetual.'

⁵ *Considerations*, pp. 27-9.

⁶ *Ibid.*, pp. 16 ; 32-4.

⁷ *Ibid.*, p. 35. The complaint is often made by contemporary writers. Cf. Otis, *op. cit.*, pp. 36-7, and Witherspoon, *Works* (1804-5), viii. 306.

⁸ Kant, *Principles of Politics*, translated by Hastie (1891), p. 52.

⁹ The expression was usual at the time. ' When an American,' said Witherspoon, ' spoke of going to England,' before the troubles arose, ' he always called it going home.'—*Works*, ix. 169.

¹⁰ *Writings of John Jay*, ii. 410, quoted in Winsor, *Narrative and Critical History of America*, vi. 249.

¹¹ Samuel Bard, *Americanus* ; Corbin Griffin, *Virginienensis* ; Thomas Ruston, *Pennsylvaniensis* ; Jacobus Tapscott, *Americanus* ; Samuel Martin, *Americanus*.—*List of the Graduates in Medicine in the University of Edinburgh, sub anno 1765*.

¹² William Robertson, the historian, Principal of the University 1762-93. ' The ferment which

. . . agitated our North American Colonies' interfered, he wrote, with the completion of the design of his *History of America*. He heartily approved of the repeal of the Stamp Act. His political views on the American Question in its later stages are clearly expressed—partly with the wisdom that comes after the event—in a letter dated 6th October 1775: 'Incapacity, or want of information,' he wrote, 'has led the people employed there [in America] to deceive the Ministry. Trusting to them, they have been trifling for two years, when they should have been serious, until they have rendered a very simple piece of business extremely perplexed. They have permitted colonies disjointed by nature and situation to consolidate into a regular systematic confederacy; and when a few regiments stationed in each capital would have rendered it impossible for them to take arms, they have suffered them quietly to levy and train forces, as if they had not known and seen against whom they were prepared. But now we are fairly committed, and I do think it fortunate that the violence of the Americans has brought matters to a crisis too soon for themselves. From the beginning of the contest I have always asserted that independence was their object. The distinction between *taxation* and *regulation* is mere folly. There is not an argument against our right of taxing that does not conclude with tenfold force against our power of regulating their trade. They may profess or disclaim what they please, and hold the language that best suits their purpose; but if they have any meaning, it must be that they should be free states, connected with us by blood, by habit, and by religion, but at liberty to buy and sell and trade where and with whom they please. This they

will one day attain, but not just now, if there be any degree of political wisdom or vigour remaining. . . . We are past the hour of lenitives and half exertions.' 'It is lucky,' he added, 'that my American History was not finished before this event. How many plausible theories that I should have been entitled to form, are contradicted by what has now happened!'—*Account of the Life and Writings of William Robertson* (1801), pp. 80-1.

¹³ *Catalogue of the Graduates of the University: Doctors of Laws, sub anno 1754.* The following is the relative excerpt from the College Minutes, 1733-1790:

'Edinr. 20th June 1754.

'A Faculty being called a motion was made to confer the degree of Doctor of Laws on Collonel Lee of Virginia. Mr. McKenzie and Mr. Erskin agreeing to the motion the degree was ordered and his Diploma ordered to be wrote out in the usual manner it being understood that the s^d Coll^l Lee was to give 50£ str. to the Library.'

¹⁴ Boswell, *Life of Johnson*, ed. by Birrell, iv. 76.

¹⁵ *Ibid.*, iv. 75.

¹⁶ *The American Times, A Satire, in Three Parts. In which are delineated the Characters of the Leaders of the American Rebellion.* By Camillo Querno [Jonathan Odell]. The satire was published at New York in 1780 along with *Cow Chace*. See p. 60 for the lines quoted (British Museum copy).

¹⁷ Franklin, *Life*, ed. by Bigelow, ii. 425.

¹⁸ *Ibid.*, i. 108.

¹⁹ There is no authority in the records of the University for the statement made by Sparks, *Life of Franklin* (1840), i. 267, that Franklin received an honorary degree—that of Doctor of Laws—from the University of Edinburgh.

²⁰ See Sparks, *op. cit.*, i. 334-5. Cooper, Stiles and Winthrop are mentioned by Sparks as owing the honour to Franklin's recommendation.

The following are the Americans who received the honorary degree of Doctor of Divinity from the University of Edinburgh between 1762 and 1785: Ezra Stiles, Newport, Rhode Island, in March 1765 (one out of three on whom the degree was conferred in that year); Eleazer Wheelock, Dartmouth, New Hampshire; Samuel Cooper, A.M., Boston, New England; and Andrew Eliot, Boston, New England, in 1767 (three out of five); James Dana, A.M., Wallingford, New England, and John Rogers, New York, in 1768 (two out of five); Samuel Haven, Portsmouth, New England, in 1769 (one out of four); John Ewing, Philadelphia, in 1774; Alexander Hewat, Charlestown, South Carolina, in 1780; Simeon Howard and John Lathrop, Ministers of Boston, New England, in 1785.

In 1771 (4th July) John Winthrop, Professor of Mathematics, Cambridge, Massachusetts, received the degree of Doctor of Laws. The degree was not again conferred on any American till February 1785, when the recipients were His Excellency Jonathan Trumbull, Governor of Connecticut; the Hon. James Bowdoin, President of the American Academy of Arts and Sciences; and the Rev. Samuel Williams, Professor of Mathematics, Cambridge, New England. (See *Catalogue of Graduates, sub annis.*)

²¹ Thomas Hutchinson, Governor of Massachusetts Bay. In his Diary for 24th March 1778 he wrote: 'To my surprize Dr. Robertson of Edinburgh came in about noon. I had corresponded with him in America, but never saw him. He has laid aside his History of the English Colonies. He

gave this reason—there was no knowing what would be the future condition of them. . . . He said, upon Dr. Franklin's recommendation, he had procured Diplomas for several of the New England Clergy, who he had reason to believe became active in promoting the revolt, and mentioned Channing ; and upon my naming Cooper, remembered him also,—and Winthrop, tho' not of the Clergy.'—*Diary and Letters of Thomas Hutchinson*, ed. by P. O. Hutchinson (1886), ii. 194-5.

²² For Franklin's own account of the ' Hutchinson Letters dispute ' see *Life* (Bigelow), ii. 186-238.

²³ For facts and arguments as to the dates of signing, see Friedenwald, *The Declaration of Independence* (1904), ch. vi. ' There could have been no signing on July 4 ' (p. 150). For Lives of the Signers written by pious hands, see Sanderson's *Biography of the Signers of the Declaration of Independence* (1823-27).

²⁴ The expression was first applied to the Declaration by a distinguished American, Rufus Choate, in 1856, in a ' Letter to the Whigs of Maine ' : ' the glittering and sounding generalities of natural right which make up the Declaration of Independence.'

Even as late as 1856 some courage was required in America thus to animadvert upon fundamentals in a national confession of political faith. Bancroft, e.g., had written in his *History of the American Revolution* (i. 3), published four years earlier : ' The authors of the Revolution avowed for their object the welfare of mankind, and believed that they were in the service of their own and of all future generations. Their faith was just. . . . All men are brothers ; and all are bondsmen for one another.' Again, in 1860, he wrote of the Declaration of Independence in his *History of the United*

States (viii. 472): 'The bill of rights which it promulgates, is of rights that are older than human institutions, and spring from the eternal justice that is anterior to the state.' 'The heart of Jefferson in writing the declaration, and of congress in adopting it, beat for all humanity. The assertion of right was made for the entire world of mankind, and all coming generations, without any exception whatever.'

Mr. Rufus Choate's criticism, which political science and sagacity support, was abundantly anticipated by Loyalist writers, in propounding and in condemning principles, in the two or three years preceding 1776. Their standpoint is expressed as follows in one of the best-written, ablest, and highest-toned of contemporary pamphlets—*A Letter from a Virginian to the Members of the Congress to be held at Philadelphia, on the first of September, 1774* (Anonymous; 1774, [? Boston], 29 pp.): 'Your opinions will have the effect of laws, and your resolves may decide the fate of America. . . . The great outlines, the fundamental principles of our constitution, are within the reach of almost every man's capacity; they require little more than leisure to study them, memory to retain them, and candour to form a true judgment of them; unhappily for the order and peace of society, this inestimable privilege is but too often abused. Men in general are governed more by their temper than their judgment; they have little leisure and still less inclination, to inform themselves exactly of the necessary constitutional powers of the supreme magistrate, or of their own legal rights; they have been told that liberty is a very great blessing; they talk incessantly of it; they find something enchanting in the very sound of the word; ask them the

meaning of it, they think you design to affront them ; push them to a definition, they give you at once a description of the state of Nature. . . . Hand bills, News Papers, party Pamphlets are the shallow and turbid sources from whence they derive their notions of government ; these they pronounce as confidently and dogmatically, as if a political problem was to be solved as clearly as a mathematical one, and as if a bold assertion amounted to a demonstration" (pp. 5-7). 'Teach the people in mercy to beware how they wantonly draw their swords in defence of political problems, distinctions, refinements, about which the best and the wisest men, the friends as well as the enemies of America, differ in their opinions, lest while we deny the mother country, every mode, every right of taxation, we give her the rights of conquest' (p. 29, concluding sentence).

The best contemporary and immediate criticism of the principles and alleged facts founded on in the Declaration is probably that of Lind, a barrister in London, in his *Answer to the Declaration of the American Congress* (London, 1776 ; 132 pp.)—a work which passed through several editions—at least five—in the year of its publication. 'An attempt,' he said, 'was made to establish a theory of government ; a theory as absurd and visionary, as the system of conduct in defence of which it is established, is nefarious' (p. 119).

In the same year Hutchinson published his *Strictures upon the Declaration of the Congress of Philadelphia ; in a Letter to a Noble Lord* (London, 1776 ; 32 pp.). (See *Diary*, ii. 112-13.) The pamphlet is more forcibly written than Lind's, but it is less explicit. Hutchinson's views (in a retrospect) are thus expressed by him : 'I am of

opinion that, if no taxes or duties had been laid upon the colonies, other pretexts would have been found for exception to the authority of Parliament. The body of the people in the colonies, I know, were easy and quiet. They felt no burdens. They were attached, indeed, in every colony to their own particular constitutions, but the supremacy of Parliament over the whole gave them no concern. They had been happy under it for an hundred years past. They feared no imaginary evils for an hundred years to come. But there were men in each of the principal colonies, who had independence in view, before any of those taxes were laid, or proposed, which have since been the ostensible cause of resisting the execution of Acts of Parliament. Those men have conducted the rebellion in the several stages of it. . . . Their designs of independence began soon after the reduction of Canada, relying upon the future cession of it by treaty. They could have no other pretence to a claim of independence, and they made no other at first, than what they called the natural rights of mankind, to choose their own forms of government, and to change them when they pleased. This, they were soon convinced, would not be sufficient to draw the people from their attachment to constitutions under which they had so long been easy and happy: some grievances, real or imaginary, were therefore necessary.'—*Strictures*, p. 4. In his speech at the 'General Court or Assembly at the Massachusetts Bay,' at Boston, on 6th January 1773 (British Museum Add. MSS., 35,912, ff. 180-7), Hutchinson had said: 'I know no line that can be drawn between the supreme authority of Parliament and the total independence of the colonies. It is impossible there should be two independent legislatures in one and

the same State ; for although there may be one Head, the King, yet the two legislative bodies will make two Governments, as distinct as the Kingdoms of England and Scotland before the Union. . . . Independence I may not allow myself to think that you can possibly have in contemplation.'

²⁵ Franklin in a letter from London to Lord Kames, 11th April 1767 : ' I am fully persuaded with you, that a *consolidating union*, by a fair and equal representation of all the parts of this empire in Parliament, is the only firm basis on which its political grandeur and prosperity can be founded. Ireland once wished it, but now rejects it. The time has been, when the colonies might have been pleased with it ; they are now *indifferent* about it ; and, if it is much longer delayed, they too will *refuse* it. But the people of this country cannot bear the thought of it, and therefore it will be delayed. Every man in England seems to consider himself as a piece of a sovereign over America ; seems to jostle himself into the throne with the King, and talks of *our subjects in the colonies*. . . . All the colonies acknowledge the King as their Sovereign ; his Governors there represent his person : Laws are made by their Assemblies or little Parliaments, with the Governor's assent, subject still to the King's pleasure to confirm or annul them : suits arising in the colonies, and differences between colony and colony, are determined by the King in Council. In this view, they seem so many separate little states, subject to the same Prince. The *sovereignty of the KING* is therefore easily understood. But nothing is more common here than to talk of the *sovereignty of PARLIAMENT*, and the *sovereignty of THIS NATION* over the colonies ; a kind of sovereignty, the idea of which is not so

clear, nor does it clearly appear on what foundation it is established.'—Tytler, *Memoirs of the Life and Writings of Lord Kames* (2nd ed., 1814), ii. 103, 108 ; Franklin, *Life*, i. 515, 518.

²⁶ It was Rush, according to his own testimony, who induced Paine to prefer the title 'Common Sense' to the title 'Plain Truth.'

²⁷ *The Works of James Wilson*, edited by Andrews (2 vols., Chicago, 1896), i. 2-3.

²⁸ *The American Times* (1780), pp. 45-6.

²⁹ *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*. See *Works* (3 vols., 1804), iii. 199-246, and ii. 501-43 (ed. of 1896), especially pp. 524-5, 526, 530, 533-4, 536, 541-2.

³⁰ *Works* (1804), iii. 249-69, and (1896) ii. 547-65, especially pp. 564-5.

³¹ See *Memorial Book of the Sesquicentennial Celebration of the Founding of the College of New Jersey* (New York, 1898), pp. 327-9.

³² *Works*, viii. 308-30.

³³ *The American Times* (1780), pp. 47-49.

³⁴ *Works*, v. 176-216.

³⁵ *Works*, ix. 168.

³⁶ *Works*, v. 217-36.

³⁷ *Works*, vii. 280-1.

³⁸ *Works*, v. 237-70.

³⁹ *Works*, v. 248.

⁴⁰ *Works*, viii. 330.

⁴¹ See *Memorial Book of the Sesquicentennial Celebration*, pp. 112, 391.

⁴² *Works*, ix. 145-6.

⁴³ See Oliver, *Alexander Hamilton* (1906), p. 18. Hamilton thereupon went to King's College (Columbia).

SOME MARKS OF ENGLISH HISTORY

¹ Burke, *Correspondence*, iv. 118: Letter to Dupont.

² *Speeches* (1853), iv. 580-1.

³ *Ibid.*, iv. 374.

⁴ *Ibid.*, iv. 568.

⁵ *Ibid.*, iv. 568.

⁶ Sir James Mackintosh, Speech in defence of Peltier, 21st February 1803: *Miscellaneous Works* (1851), p. 666.

⁷ *Oceana and Other Works* (ed. 1747), p. 681.

⁸ Toland in his *Life of Harrington*; see *op. cit.*, xxx.

⁹ See Burton, *Parliamentary Diary* (1828), i. 362, 363, 364.

¹⁰ *Ibid.*, i. 274.

¹¹ *Ibid.*, i. 254.

¹² *Ibid.*, ii. 467-8.

¹³ *A Brief View and Survey of the Dangerous and Pernicious Errors to Church and State, in Mr. Hobbes's Book, entitled Leviathan* (1676), p. 85.

¹⁴ *Ibid.*, p. 117. Probably the most relevant part of Clarendon's criticism of Hobbes is found in the words, 'And what greater mischief and ruin can threaten the greatest Prince, than that their subjects should believe, that all the liberty they have, consists only in those things which the Sovereign hath hitherto pretermitted, that is, which he hath not yet taken from them . . . ?'—*Ibid.*, p. 82.

¹⁵ Clarendon, *Life* (1759), i. 81.

¹⁶ *Ibid.*, ii. 7.

¹⁷ *Civil Government*, ch. xiv. § 164.

¹⁸ *Speeches*, iv. 745.

¹⁹ *Ibid.*, iv. 750.

²⁰ Sir Thomas Smith's *Commonwealth of England* is professedly and in fact an exposition of government in the England of his day, set forth 'not in that sort, as Plato made his Commonwealth, or Xenophon his Kingdome of Persia, nor as Sir Thomas More his *Utopia*, being fained Commonwealthes, such as never was nor shall be, vaine imaginations, fantasies of philosophers, to occupy the time, and to exercise their wits: but as England standeth, and is governed at this day the eight and twentie of March, Anno 1565 . . . and in the one and fiftieth yeere of mine age.'—Ch. xi. 283-4 (ed. 1633).

POLITICS AS A PRACTICAL STUDY

¹ Spinoza, *Tractatus Politicus*, c. i. § 1. Cf. i. §§ 3-4.

‘Iura autem communia et negotia publica a viris acutissimis sive astutis sive callidis instituta et tractata sunt; adeoque vix credibile est, nos aliquid, quod communi societati ex usu esse queat, posse concipere, quod occasio seu casus non obtulerit, quodque homines, communibus negotiis intenti, suaeque securitati consulentes, non viderint.’—c. i. § 3. In the same chapter, § 6, he says, ‘imperii virtus securitas.’

² ‘Maiestas est summa in cives ac subditos legibusque soluta potestas.’—*De Republica*, lib. i. c. 8. ‘Maiestas vero nec maiore potestate, nec legibus ullis, nec tempore definitur.’—*Ibid.*

³ Cf. the concluding words of the *Leviathan*: ‘And thus I have brought to an end my Discourse of Civil and Ecclesiastical Government, occasioned by the disorders of the present time. . . .’ The lessons of the Civil War, from the standpoint of Hobbes, are enforced also in *A Dialogue of the Common Law* and in *Behemoth*—in the latter in historical review. See, e.g., the seven causes of the people being ‘corrupted’ and ‘seduced’ from their allegiance: *Behemoth*, Part I. pp. 166-9 of vol. vi. of *The English Works of Thomas Hobbes*, ed. by Molesworth (1840).

⁴ Locke’s reasoning and assertions are especially pertinent to 1688: (a) in his conclusion that ‘absolute monarchy, which by some men is counted for the

only government in the world, is indeed inconsistent with civil society, and so can be no form of government at all' (§ 90); (b) in his general defence of the supremacy of the legislative power, but with qualifications as laid down in § 131; (c) in some of his particular pleas for probity and purity, as where he says, with his mind on recent intervention by the Crown, that 'thus to regulate candidates and electors, and new model the ways of election, what is it but to cut up the government by the roots, and poison the very fountain of public security?' (§ 222); and (d), perhaps most conspicuously, in his conception and admitted applications of prerogative as 'being nothing but a power in the hands of the prince to provide for the public good in such cases which, depending upon unforeseen and uncertain occurrences, certain and unalterable laws could not safely direct' (§ 158).

In the political history of Britain the principles and the degree of relevancy of Lockism have their best illustration in the arguments and the language used by both Whigs and Tories at the trial of Sacheverell.

⁵ Hobbes's *Translation of Thucydides*: 'To the Readers': Hobbes's *English Works*, ed. by Molesworth, VIII. iv.

⁶ *The Catching of Leviathan* (1658), intended as a sequel to the *Castigations*, p. 507 of the combined work, and written 'to let him [Hobbes] see the vanity of his petulant scoffs and empty brags, and how open he doth lie to the lash, whensoever any one will vouchsafe to take him in hand to purpose' ('To the Christian Reader').

⁷ Adam Smith's *Lectures on Justice, Police, Revenue and Arms*, ed. by Cannan, p. 11.

⁸ See Brougham's *Speeches*, ii. 609, 617, quoted

by Dicey, *Law and Public Opinion in England* (1905), pp. 184-5.

⁹ *Ibid.*, ii. 617.

¹⁰ 'I am now protesting,' said Peel, 'against that unqualified and exceptionless doctrine—namely, that you ought to treat Canada in respect to colonial and commercial intercourse on the same footing as other countries. If such a proposition be entertained, there is an end at once to our colonial empire, and to maintain it will only be to place a useless burden on ourselves. If you sanction this proposition, then you ought also to say, let the colonies assert their own independence, and provide for their own maintenance.'—*Speeches* (1853), iv. 82; see the whole speech, 13th May 1842, and compare with the speech on the Navigation Laws, iv. 761-70.

¹¹ *English Historical Review*, October 1888.

¹² Cobbett's *Parliamentary History* (1811), vi. 1351-5.

¹³ *Ibid.*, vii. 585.

¹⁴ *Ibid.*, vii. 914; and Coxe's *Memoirs of Sir Robert Walpole* (1798), i. 165-6.

¹⁵ *Social Contract*, bk. I. ch. vii. and the beginning of ch. viii.

¹⁶ *Ibid.*, ii. 7. For the general subject compare Montesquieu, *De l'Esprit des Lois*, liv. xix. ch. xvi., xxi. and xxvii., and de Tocqueville, *De la Démocratie en Amérique*. Meaning by 'manners' (*mœurs*, *mores*) 'the moral and intellectual characteristics of social men taken collectively'—'the practical experience, habits, opinions' of men—Tocqueville argued that the laws contribute more to the maintenance of the democratic republic in the United States than the physical conditions of the country, and the manners than the laws.

¹⁷ *E.g.* he urges caution in disturbing the *liberum*

veto. Cf. 'Quel que soit celui qu'on adoptera, l'on ne doit pas oublier ce que j'ai dit dans le *Contrat Social* de l'état de foiblesse et d'anarchie où se trouve une nation, tandis qu'elle établit ou réforme sa constitution. Dans ce moment de désordre et d'effervescence, elle est hors d'état de faire aucune résistance, et le moindre choc est capable de tout renverser.'—*Le Gouvernement de Pologne*, ch. xv. 'Je ne dis pas qu'il faille laisser les choses dans l'état où elles sont ; mais je dis qu'il n'y faut toucher qu'avec une circonspection extrême. En ce moment on est plus frappé des abus que des avantages.'—ch. i.

¹⁸ *Oceana and Other Works of James Harrington* (1747), pp. 38, 278, 147.

¹⁹ See Dicey, *Law and Public Opinion in England*, pp. 302-9.

²⁰ 'La liberté politique ne se trouve que dans les gouvernements modérés. Mais elle n'est pas toujours dans les Etats modérés : elle n'y est que lorsqu'on n'abuse pas du pouvoir ; mais c'est une expérience éternelle, que tout homme qui a du pouvoir est porté à en abuser ; il va jusqu'à ce qu'il trouve des limites. . . . Pour qu'on ne puisse abuser du pouvoir, il faut que, par la disposition des choses, le pouvoir arrête le pouvoir.'—*De l'Esprit des Lois*, liv. xi. ch. iv.

Cf. 'Comme dans les démocraties le peuple paraît à peu près faire ce qu'il veut, on a mis la liberté dans ces sortes de gouvernements, et on a confondu le pouvoir du peuple avec la liberté du peuple.'—ch. ii.

See the third quotation, p. 62 *supra*, from Burke.

FREDERIC WILLIAM MAITLAND

¹ S. R. Maitland, *Essays on Subjects connected with the Reformation in England* (reprinted 1849), p. 198. Readers of F. W. Maitland to whom these *Essays* are known (and they still deserve to be widely known), will have observed the alertness of mind and freedom in style common to both writers. The following passage from a footnote to Essay x. ('The Puritan Palinodia': *Essays*, p. 199) might have been written by F. W. Maitland: the reference is to Limborch (1633-1712), author of a *History of the Inquisition*: 'Limborch was a man of the right sort, which was much more important than that he should know about the Inquisition. So he made a great book, and prefixed a fierce dedication to Archbishop Tillotson assuring his Grace, and all other readers, in great words, and great letters, that he had in the great book thoroughly exposed Popery in its true colours, and that they might make up their minds on that subject, before they set out on their journey of some eight hundred folio pages of Latin, supposing that they had any idea of encountering that fatigue. What was to have been an introductory treatise to "The Book of Sentences" grew, as the author learned his lesson, into the more ambitious form and title of "Historia Inquisitionis."'

² Published in *Lectures on Medieval and Modern History* (1887).

³ See Maitland's article on Stubbs in the *English Historical Review* (1901), xvi. 417 *sqq.*

⁴ Edward Leigh, *A Treatise of Religion and Learning* (1656), p. 322.

⁵ See also the 'concluding reflexions' in the third volume of the *Constitutional History of England*, where ('at the close of so long a book') Bishop Stubbs 'may be suffered to moralise.' Eight years earlier (1870), in the Preface to the *Select Charters*, he had uttered a firm and telling plea for the study of constitutional history as 'a recognized part of a regular English education.'

⁶ 'The English, like the Continental village community, . . . inhabited a shell—an open-field system—into the nooks and corners of which it was curiously bound and fitted, and from which it was apparently inseparable. The remains of this cast-off shell still survive in parishes where no Enclosure Act happens to have swept them away. . . . The method pursued in this Essay will be, first, to become familiar with the little distinctive marks and traits of the English open-field system . . . ; and then, proceeding from the known to the unknown, carefully to trace back the shell by searching and watching for its marks and traits as far into the past as evidence can be found.'—Seebohm, *English Village Community* (1883), pp. xiii-xiv. Many students of economic history have had their interest first awakened by this book; and the interdependence between the economic and the constitutional (and 'political') history of England has come to be much more widely recognised, and is much less insecurely established, since Mr. Seebohm, Dr. Gross, and Dr. Cunningham and a few others had their first hopes and expectations. Maitland tells us that the title *Domesday Book and Beyond* was chosen

for the purpose of indicating that he had followed 'that retrogressive method "from the known to the unknown" of which Mr. Seeböhm is the apostle. The Beyond is still very dark: but the way to it lies through the Norman record. That in some sort I have been endeavouring to answer Mr. Seeböhm, I cannot conceal from myself or from others.'—*Domesday Book and Beyond*, Preface.

⁷ See, e.g., 'The History of English Law as a Branch of Politics' in *Essays in Jurisprudence and Ethics* (1882), and 'English Opportunities in Historical and Comparative Jurisprudence' (1883) in *Oxford Lectures and other Discourses* (1890).

⁸ See Preface to *Bracton's Note-Book* (1887).

⁹ Maitland tells us in 1895 that he was no 'instructed Romanist'—that he acquired his knowledge of Roman Law late in life and 'painfully' (*Bracton and Azo*, p. xxxiii.). Maine in *Ancient Law*, ch. iv., had written of—had written—the plagiarisms of Bracton.' 'That an English writer of the time of Henry III. should have been able to put off on his countrymen as a compendium of pure English law a treatise of which the entire form and a third of the contents are borrowed directly from the *Corpus Juris*, and that he should have ventured on this experiment in a country where the systematic study of the Roman law was formally proscribed, will always be among the most hopeless enigmas in the history of jurisprudence.' This, says Maitland, *Bracton and Azo*, p. xiv., is a 'stupendous exaggeration.' 'The amount of matter that Bracton directly derived from the *Corpus Iuris* is not one-third, is not a thirtieth part of his book. The amount of matter that Bracton borrowed from Azo is larger; it may perhaps amount in all to a fifteenth of the treatise.' See page xxiv: 'Nor is

it for one moment suggested that Bracton and his predecessor Glanville derived no benefit from the books of the legists and canonists. On the contrary, the benefit that they derived was inestimably great. They learnt how to write about, how to think about, law, and besides this they acquired some fertile ideas, distinctions and maxims, which they made their own and our own. In a very true sense, Bracton is most Roman, not when he is copying from the Institutes or from Azo's Summa, but when he is studying his Note Book, when he is weaving a doctrine out of the plea rolls, when he is dealing with the judgments of Pateshull and Raleigh as Azo had dealt with the opinions of Ulpian and Paulus, or the glosses of Martin and Placentin. It is then that we see what the revived jurisprudence of Rome has done for English law. But in order that we may intelligently admire Bracton's best work we must know his worst also. When he uses an Italian book as a model, he does well; when he uses it as a "crib," he does ill.' 'But he did no wrong. A literary communism prevailed. . . . Otherwise it might be at Bologna, where already there was strenuous competition for students and for fees. Here in England there was no such struggle, and therefore there was no legal or moral copyright in a law-book.' It is the same with the historians, 'and yet we do not accuse Florence and Hoveden, Wendover and Paris, of "putting off" and "venturing."'—*Op. cit.*, p. xxviii, Cf. Pollock's Note in his edition of *Ancient Law*, pp. 116-17.

¹⁰ *Bracton and Azo*, p. x. See Pollock and Maitland, *History of English Law*, i. 185, for what is known of Bracton's life.

¹¹ 'In the summer of 1884 Paul Vinogradoff,

Professor of History in the University of Moscow, was in England seeking materials for mediæval history. A study of the English manor led him to a study of Bracton's text, and he went behind that text to Bracton's authorities. He then heard . . . of a MS. at the British Museum known as MS. Additional 12,269. Carefully reading it he came to the conclusion that it was closely connected with Bracton's work and indeed was probably Bracton's own note book. This discovery he published to the world in *The Athenæum* for 19 July 1884.'—*Bracton's Note-Book*, p. 12.

¹² *Op. cit.*, last words of Preface.

¹³ *Ibid.*, p. 120.

¹⁴ See the opening words of his Introduction to *Select Pleas of the Crown*. There is nothing, however, in the rules of the Selden Society to forbid the 'modern dissertation,' although the primary objects are 'the publication of original documents and the reprinting or editing of works of sufficient rarity or importance' in the history of English law.

¹⁵ Cf. *Year Books of Edward II.*, vol. i. p. ix: 'When all has been said that it is fair to say of England's wealth of legal records, the truth remains that the history of English law from the days of Edward i. to the days of Edward vii. must be primarily sought, not in records properly so called, but in reports. To this may be added that in the way of intellectual products medieval England had nothing more purely English to show than its law reports, its Year Books.' They have a 'unique position in the history of jurisprudence, in the history of civilisation, in the history of mankind.'—*Op. cit.*, p. xvi.

¹⁶ 'While as yet there was little science and no popular science, the lawyer mediated between the

abstract Latin logic of the schoolmen and the concrete needs and homely talk of gross, unschooled mankind. Law was the point where life and logic met.'—*Ibid.*, p. xxxiii. Cf. p. lxxxi.

¹⁷ 'When many are edited as Mr Pike has edited a few, no student of English history will dare to neglect them. . . . These Year Books are a precious heritage. They come to us from life. Some day they will return to life once more at the touch of some great historian.'—*Ibid.*, p. xx.

¹⁸ *The History of English Law*, i. 185: 'The Age of Bracton.' 'Romanesque in form, English in substance—this perhaps is the best brief phrase that we can find for the outcome of his labours; but yet it is not a very good phrase.'—*Ibid.*, p. 186.

¹⁹ Maitland uses the word more than once of the Norman Conquest: for economic relations, for the framework and the strength of government in England, for the history of law, it is a 'catastrophe'—a great turning-event. 'It is a catastrophe which determines the whole future history of English law.'—*History of English Law*, i. 57.

²⁰ Much of what has been achieved by the labours of scholars like Maitland, Dr. Horace Round, and Professor Vinogradoff, is incorporated in works published within recent years, a few of them (e.g., M. Charles Petit-Dutaillis' *Studies*) designed to 'supplement' *Stubbs*. But the best antidote to the poisonous doctrine that *Stubbs* is 'out of date' is administered by Maitland himself in his appreciation of the historian in the *English Historical Review*. *Stubbs* is, at least, still a fruitful 'starting-point,' if no longer a 'summing-up.'

²¹ *History of English Law*, ii. 670.

²² *Lectures on Medieval and Modern History*, p. 433.

²³ 'The academic study of the canon law was

prohibited. No step that Henry took was more momentous. He cut the very life thread of the old learning. The ecclesiastical judges in time to come might administer such of the ancient rules as were not contrariant nor repugnant to the laws (newly interpreted) of God and the statutes of our lord the king; but they would not have been, like their predecessors in time past, steeped and soaked for many a year in the papal law-books and their ultra-papal glosses. And, as if this were not enough, Henry encouraged and endowed the study of the "civil law," and the unhallowed civilian usurped the place of the canonist on the bench. . . . If Henry was minded to be "the pope, the whole pope, and something more than pope" (Stubbs, *Seventeen Lectures*, p. 262), he might trust the civilians to place the triple and every other Crown upon his head.'—*Roman Canon Law in the Church of England* (1898), pp. 92-4.

²⁴ *Ibid.*, p. 120: 23 Hen. VIII. c. 9: 'An Act that no person shall be cited out of the diocese where he or she dwelleth, except in certain cases.'

²⁵ 'Last year, being sent from England, I was encouraged to undertake this translation by Professor Henry Sidgwick. What encouragement was like when it came from him, his pupils are now sorrowfully remembering.'—*Political Theories of the Middle Age*, xlv. f.n. 5.

²⁶ See Stevenson, *Asser's Life of King Alfred*, note on c. 106; and *History of English Law*, i. 17 and ii. 661. 'Asser represents Alfred as inquiring into the correctness of his sheriffs' and ealdormen's legal decisions, and threatening them with removal for their ignorance of the law. But as Mr. Kemble has pointed out, it is nowhere intimated that Alfred assumed the power to reverse those decisions, or

that he attempted to create any judicial system more satisfactory than the one which, by common consent, even in his time, was utterly unequal to the public wants. . . . Even then, if the king consented to hear a complaint of denial of justice, his power of redress seems to have gone no further than to send the case back to the ealdorman or sheriff, with the threat of punishment if justice were still denied; or, what was probably more usual, to negotiate an extra-judicial compromise between the parties.'—*Essays in Anglo-Saxon Law* (1876), pp. 25-6. Stubbs had written two years earlier, *Constitutional History*, i. 439: 'The Anglo-Saxon kings heard causes in person: the judgment of the king was the last resort of the litigant who had failed to obtain justice in the hundred and the shire.'

²⁷ Not 901, but either 899 or 900: see Stevenson, *English Historical Review*, xiii. 71. The error of accepting 901 has been due to the misplacement of a marginal year in the Chronicles. With allowance made for this, the evidence of the Chronicles themselves would be for 900, the reign having been one of twenty-eight and a half years. Mr. Stevenson decided for 899 owing to the additional fact that Ethelward, the Chronicler, states that Edward the Elder was crowned on Whitsunday (June 8), 900. The month of Alfred's death—October—is not in dispute.

²⁸ In the *English Historical Review*, viii. (1893), 1-17, Professor Vinogradoff pointed out that the analogy of other compound words of which *folk* is a part does not support the interpretation of 'folk-land' as implying possession by the folk, and, further, that there is nothing in the documents to support such interpretation. Folk-land, in distinction from book-land, is 'land held by a public

title, proceeding from the folk, under special obligations to the state and to the king.'—*Growth of the Manor* (1905), p. 244: it is *terra reipublicae iuris* (see references to two charters of Cenwulf cited by Vinogradoff, *op. cit.*)—'a sounding expression which can hardly have meant anything else'—Vinogradoff, *English Society in the Eleventh Century* (1908), p. 256. See *Domesday Book and Beyond*, pp. 244-258, and *History of English Law*, i. 40, in support of this return to Spelman's interpretation in place of that of Allen: 'the land of the people . . . as the word imports.'—*Royal Prerogative* (1830), p. 143, where Spelman is quoted in a footnote: Cf. Freeman, *Norman Conquest*, 3rd ed., i. 84: 'The folkland of England and the *ager publicus* of Rome are the same thing. To Mr. Allen . . . belongs the honour of having explained what *folkland* and *bookland* really are.'

²⁹ Mr. Eyton's *Key to Domesday* was published in 1878.

³⁰ 'Terras autem (rex Willelmus) militibus ita distribuit, et eorum ordines ita disposuit, ut Angliae regnum LX millia militum indesinentur haberet, ac ad imperium regis, prout ratio proposcerit, celeriter exhiberet.'—Ordericus Vitalis, *Eccles. Hist.*, lib. iv. c. 7. 'A whole army was . . . camped upon the soil, and the King's summons could at any moment gather sixty thousand knights to the royal standard.'—Green, *Short History of the English People*, c. ii. s. 5. 'Making every allowance, we shall probably be safe in saying that the whole *servitium debitum*, clerical and lay, of England can scarcely have exceeded, if indeed it ever reached, 5000 knights.'—Round, *Feudal England*, p. 292. Cf. *Domesday Book*, pp. 510-11. 'Sixty thousand' is frequently used by the Chroniclers for a large

number. On 'Chroniclers' Estimates of Numbers,' see references in Sir James H. Ramsay's article, *Eng. Hist. Review*, xviii (1903), 626-9. Mr. Round makes the total of the English at Bannockburn 21,540—*The Commune of England*, pp. 289 *sqq.* A duty is now imposed on Scottish investigators.

³¹ See *Feudal England*, pp. 225 *sqq.*, 258-62.

³² Mr. Round was the first to show the significance of these formal returns (*cartae*) made to the exchequer by the king's tenants-in-chief, and he regards them as the best starting-point for an inquiry into the origin and growth of military tenure. On the old and the new feoffment, see *Feudal England*, pp. 237-9, 258, 296. 'The dividing line between the "old" and the "new" feoffments was the death of Henry I. in 1135. All fees existing at that date were of the *antiquum feoffamentum*; all fees created subsequently were of the *novum feoffamentum*.'—*The Commune of London*, p. 59. [*De Feoffamento veteri et novo*. These phrases began in the reign of Hen. II., when those knights or military tenants who had been enfeoffed in any fees or parts of a fee at or before the death of K. Henr. I. were said *tenere feoda de veteri feoffamento*. But those who were infeoffed in their lands after the death of the said king, they were said *tenere de novo feoffamento*.]—Cowell, *The Interpreter*, ed. 1708—a work still of value for much besides a definition of *Prærogativa Regis*, even although according to Royal Proclamation ('there being nothing now unsearched unto by the curiosity of men's brains') 'he hath fallen in many things to mistake and deceive himself.'] The 'cardinal facts' are thus summed up by Vinogradoff, *English Society*, p. 42: 'We know from the comparison of the returns of 1166 as to the number of knights' fees

held from the different baronies, that there were three kinds of knight service at that time: that from the old fees (*antiquum feoffamentum*), created in the reigns of the three Norman kings, that of the new fees (*de novo, novum feoffamentum*), instituted after Henry I.'s reign, and that of the knights not enfeoffed with particular estates but maintained on the domain—*super dominium*—of the barony. The first and third category were drawn together in respect of the feudal obligations of the barony; they represented the original service due from it, its "servicium debitum." The second category arose from the policy of subinfeudation carried on by the barons on their own account, and had nothing to do with the original "due service," but Henry II. asserted a right to exact military service or its substitute, scutage, and the other eventual privileges of an overlord in regard to these fees constituted in excess of "due service," as well as in regard to the original fees.' When the number of knights' fees created was less than sufficient to discharge the 'service,' the adverse balance was charged on the demesne—the non-infeudated part of the fief: see Round, *Feudal England*, pp. 238-9.

³³ Almost all recent commentary on Magna Carta has tended to diminish the historical aptness of the well-known words of Stubbs (*C. H.*, I. ch. xii. § 155), that 'the Great Charter is the first great act of the nation after it has realised its own identity,' although it may be said that, in emphasising the strict, technical and at times lawyerly interpretation of words and articles and the feudal setting in general, we are in danger of not allowing to the historian all that he himself would have claimed for two of his own tests—(1) that 'the words of the charter, to be carried out at all, involved much more than

they expressed' (*S. C.*, p. 30); and (2) 'neither John's tyranny nor its overthrow could have taken the form they took without the reforms of Henry II.' (*Ibid.*, p. 270).

That the king is under 'the law' is a fundamental of the Charter, and yet this fundamental cannot be read, amid the conditions of 1215, as a safeguard of a 'people's' liberties: the king might be for the people (that was his '*officium*'); the law, expressed in laws or conditioned by their silence, might be for barons, having power but not for the common good (to which the medieval thinker, like the modern, made appeal). But, with relativity to the age as an essential test, and partly to qualify its force in our estimate of the Charter of 1215, must be taken the comprehensiveness of the provisions for an age still feudal. Three conditions, it may be urged, made for a wider interpretation of Magna Carta than that given to it in 1215 and intended for it by the main body of its promoters: (1) economic England was developing beyond the feudal stage—the stage to which a feudal jurisdiction is relevant; (2) the administrative reforms of Henry II., due to necessity and developed from policy—with a risk of stringency that is to be deemed inseparable from it rather than impolitic—were too broadly based to tolerate a feudal bias and superiority; (3) the gains achieved by the barons against the kingship under John could be pointed to by the later 'community'—could be adapted by a broader community when the terms had lost their feudal significance by passing out of their historical setting. Much of the development of English rights and English interests has been effected through such adaptation of old gains to new and unforeseen situations: it is the English standard for appreciating

the past in the present of the politics of the several ages—a standard that has its pitfalls in historical estimate.

³⁴ For the departure from the old interpretation of *legale iudicium parium*, see *Select Pleas in Manorial Courts* (1889), lxvii. and footnotes, and *Hist. of Eng. Law*, i. 151: 'Even in the most famous words of the charter we may detect a feudal claim which will only cease to be dangerous, when in course of time men have distorted its meaning: a man is entitled to the judgment of his peers: the king's justices are no peers for earls or barons' (cf. Round, *Geoffrey de Mandeville*, for feudal claim and exercise of claim). 'The judgement of peers,' wrote Mr. Pike in the same year (1895), *Constitutional History of the House of Lords*, pp. 170-1, 'in the case of persons holding their lands not directly of the Crown, but of a mesne lord, was the judgement of the other tenants of that lord, who owed suit to the same Court, and were in that respect all *peers* or equals. . . . The Peers of the Court (*Pares Curiae* or *Pares Curtis*) were known wherever the feudal system prevailed.'

³⁵ For the general sense of *lex terrae* (*lex regni*) see *History of English Law*, i. 154; for an interpretation of the words as procedure see Pike, *op. cit.*, p. 170: 'The law of the land included all legal proceedings, criminal or civil, other than the judgement of peers. The judgement of peers had reference chiefly to the right of landholders to their lands, or to some matters connected with feudal tenure and its incidents.' See also McKechnie, *Magna Carta* (1905), on article 39. M. Ch. Petit-Dutaillis, who since 1894 has stood pronouncedly for the reaction from the 'national' interpretation of the Charter, rejects the view that the design in article 39 was to

thwart the professional judges, and he gives to *lex terrae* the wider interpretation: it is 'doubtless the custom of the realm in a general sense.' See his *Studies and Notes supplementary to Stubbs' C. H.* (trans. 1908), pp. 136-7, f.n. The ordinary interpretation of *lex terrae* (even as in article 39, in and for 1215) current a little over twenty years ago was luminously expressed and suggestively applied by Mr. E. J. Phelps (U.S.A. Ambassador) in his Address at Edinburgh on 'The Law of the Land' (1886: published 1887): *e.g.*, 'In the Magna Charta of King John, the most significant expression in its most celebrated clause, appears a phrase familiar now, unknown till then, "*per legem terræ*"—by the law of the land. It indicates there at once the criterion and the bulwark of the liberties of Englishmen, and, with its context, introduces for the first time into the theory of civil government, and crystallises into language not destined to perish, the idea long moulding and shaping in the unlettered Saxon mind,—that human rights are the foundation, and not the concession, of human authority. . . . The term '—the Law of the Land—' is often made use of in a vague way, as including all the law which has force or is administered in the country. I do not so understand it. I regard it . . . as embracing only that which is fundamental. I conceive the law of the land to be the law that runs with the land, and descends with the land . . . ; that higher law under which legislation itself obtains its authority and courts their jurisdiction. It was in this sense, beyond doubt, that the words were employed in Magna Charta. Otherwise the guarantee of personal liberty there contained would altogether lose its force.'—*The Law of the Land*, p. 1. 'The American constitution declares that "no man shall

be deprived of life, liberty, or property, without due process of law." And that "no State shall pass any law impairing the obligation of contracts." The words "due process of law" have been held, both in England and America, to be precisely equivalent in their significance to the phrase in the Magna Charta, "the law of the land."—*Op. cit.*, p. 11. Cf. *Constitutional History of the United States as seen in the Development of American Law* (Lectures by Judge T. M. Cooley and others, 1889), pp. 230-1 (Charles A. Kent): 'The provision that no State shall deprive any person of life, liberty, or property without due process of law, has given rise to a great deal of litigation. It is found in substance in Magna Charta. . . . The chief difficulty is in the words "due process of law," and especially in the word "due."'

³⁶ This article is the most distinctly feudal article in the Charter: it is the most retrogressive, if progress be measured by the advance made by the king's court (for a State) at the expense of the lords' courts (for privileges and powers, partly and inherently in part, antagonistic to the interests of a State that had still to struggle for recognition). Maitland, in 1888, *Select Pleas in Manorial Courts*, p. liv, in writing of possessory assizes under Henry II. in relation to the conflict of the two jurisdictions, ventured so far as the following: 'Perhaps the greatest event in the history of English law is that Henry II. cast his protection over possession, made the disturbance of seisin a cause for complaint to the king himself.'

³⁷ Article 61. Cf. Confirmation of the Charters, 1265 (Stubbs, *Select Charters*): '. . . liceat omnibus de regno nostro contra nos insurgere et ad gravamen nostrum opem et operam dare juxta posse.' The

difficulties of the king, especially of one not in power, were the opportunity of the Opposition ; and in this situation in 1215, where there was a combination, or merely a temporary convergence, of interests, the support of theory or doctrine was readily available. The political origin, however, of the clause, as an enunciation or acceptance of a right of rebellion, or, rather, a repudiation of unrestrained power, or as a mere stumbling after a practical sovereignty, must be sought chiefly in the general reasoning and standpoints of the time—in these more than in particular and pressing exigencies. Political doctrine was in advance of political method—in advance of the economy of ‘the State’—of a State which had not yet the attributes of a true State : in 1215, as in 1258, it was hard to know how to contribute impartially and equably ‘ad honorem Dei et ad fidem nostram ac regni nostri utilitatem.’ (‘The King’s Consent to the Election of the Twenty-four’—Stubbs, *S. C.*, p. 381.)

(1) Power for the medievalist is power to do good.

(2) The Church (in its conflict for supremacy) advanced the rights of the community as superior to those of a king who, when not ruling aright, became a tyrant ; and already in Henry II.’s reign John of Salisbury—a political extremist—had formally enunciated a doctrine of tyrannicide (whereas, by article 61 of Magna Carta, the personal security of the king and that of his queen and his children were guaranteed).

‘King,’ for the Church, might be construed as a mere *vocabulum officii*, as by Manegold of Lautenbach, c. 1085 : the king has obligations and may incur penalties : if he is false to a trust—guilty of a breach of contract—are not the people absolved

from subjection to him? 'Nonne clarum est, merito illum a concessa dignitate cadere, populum ab eius dominio liberum existere, cum pactum pro quo constitutus est constat illum prius irrupisse?' —*Manegold*, quoted by Gierke, *Political Theories of the Middle Age*, p. 146 (Note 138).

Kingship within a feudal economy—kingship as mere suzerainty—rests on a contract; and there is a right of *diffidatio*. The political principle underlying feudalism is the reciprocity of rights and duties, and in the absence of the State principle and of State power it provides feudalism with its political defence.

(3) The king exists for the kingdom, not the kingdom for the king. The implied contrast between loyalty (or obedience) to the king and loyalty to the Crown (or to the king in respect of his authority by reason of the Crown) is recurrent in the Middle Age. It is fundamental in the history of England, and fundamental not merely as a theory and justification of deposition of the ruler. The subject is one which, in its connections and dependencies, has yet to be treated; but examples will illustrate the permanence and the adaptability of the distinction. The contrast of Crown with (personal) King underlies, *e.g.*, the words of Thomas Fitz Thomas to Henry III.: 'My Lord King, we Londoners will be your faithful and devoted subjects, so long as you will be good king to us.' It underlies the reasoning in the Song of Lewes. It is implied in Bracton's definition of the function of the Crown: 'Est enim corona regis facere iustitiam et iudicium et tenere pacem, et sine quibus corona consistere non potest, nec tenere.' (*De Legibus*, II. c. 24. Cf. c. 16.) It is found in the position taken up, according to his enemies, by the younger Despenser

(see Stubbs, *Chronicles of Edward I. and Edward II.*, R. S., II. li-lij). It is in harmony with the standpoint of Fortescue. It is found in part of the political thought of Francis Bacon, and found suggestively in his claim for the prerogative that it 'did for the king and still does for the Crown what the Common Law did for the subject.' More conveniently it was pressed into the service of the politics of Puritan democrats; and in the Whiggism of 1688 it contributed to a useful political end, and to the expedient constitutionalism of the *Civil Government*, although it then and therein found no logical exposition, no consistent defence.

The distinction has often rested as much on the arbitrary play of words as upon the appropriate play of the parts of the constitution: action taken from the force of selfish interest has often had to make its appeal to 'nature-rightly' theories and to look for their security in the Crown as *corpus politicum*. But there is an ancestry for 'the Crown,' whether as the 'metaphor in the Tower,' the 'hieroglyphic of the laws,' or the omnipresent expression and strength of rule; and the lines of descent go back mainly to the Great Charter.

³⁸ *Select Pleas in Manorial Courts*, 1888, p. lv.

³⁹ *English Society in the Eleventh Century*, 1908, must now be added.

⁴⁰ Cf. *Domesday Book and Beyond*, p. 223, and, for the simile of a pyramid for that 'English state which is the outcome of a purely English history,' pp. 170-1. See also Vinogradoff, *English Society*, pp. 208 *sqq.*, and Mary Bateson, *Mediæval England* (1903), pp. 97-8: 'One thing at least is clear, that the Anglo-Norman feudalism was not a very simple social scheme in which the relations of men were governed by a few determinants capable of brief analysis.' (The sen-

tences that follow bear on Maitland's 'pyramid.') 'The phrase feudal system applied to the conditions of Anglo-Norman society under the first of our Norman kings is unsatisfactory because no great lawyers had as yet appeared, ready to systematise society and to draw hard and fast lines. English society before the Conquest was in a chaotic state rapidly approaching the verge of anarchy, and the Norman kings restored government but did not immediately revolutionise or systematise society.'

⁴¹ 'As early as 1285 an ever-memorable step was taken. Some one was endeavouring to report in the vernacular—that is, in French—the oral debates that he heard in court. In 1293 a fairly continuous stream began to flow. This surely is a memorable event. When duly considered it appears as one of the great events in English history. To-day men are reporting at Edinburgh and Dublin, at Boston and San Francisco, at Quebec and Sydney and Cape Town, at Calcutta and Madras. Their pedigree is unbroken and indisputable. It goes back to some nameless lawyers at Westminster to whom a happy thought had come. What they desired was not a copy of the chilly record, cut and dried, with its concrete particulars concealing the point of law. . . . What they desired was the debate with the life-blood in it: the twists and turns of advocacy, the quip courteous and the counter-stroke quarrelsome.'—*Year Books of Edward II.*, I. xiv-xv.

⁴² See *Roman Canon Law in the Church of England*, pp. 100-1. Cf. Gierke, *Political Theories of the Middle Age*, e.g. pp. 18-19: 'Throughout the whole Middle Age there reigned, almost without condition or qualification, the notion that the Oneness and Universality of the Church must manifest itself in a unity of law,

constitution and supreme government, and also the notion that by rights the whole of Mankind belongs to the Ecclesiastical Society that is thus constituted. Therefore it is quite common to see the Church conceived as a "State." That the Principle of Oneness demands of necessity an external Unity was but very rarely doubted. . . . It was reserved for Wyclif and Hus decisively to demand that the Church should be conceived in a more inward, less external, fashion, as the community of the Predestinated, and so to prepare the way for that German Reformation which at this very point broke thoroughly away from the medieval Idea of Unity.' Cf. Figgis, *From Gerson to Grotius* (1907), p. 4.

⁴³ *English Law and the Renaissance*, p. 32: 'A hundred legislatures—little more or less—are now building on that foundation [the common law of England]: on the rock that was not submerged. We will not say this boastfully. Far from it. Standing at the beginning of a century and in the first year of Edward VII., thinking of the wide lands which call him king, thinking of our complex and loosely-knit British Commonwealth, we cannot look into the future without serious misgiving. If unity of law—such unity as there has been—disappears, much else that we treasure will disappear also, and (to speak frankly) unity of law is precarious. The power of the parliament of the United Kingdom to legislate for the colonies is fast receding into the ghostly company of legal fictions. . . . The so-called common law of one colony will swerve from that of another, and both from that of England.' Cf. *Political Theories of the Middle Age*, p. xliii.

⁴⁴ *Year Books of Edward II.*, vol. I., Introduction, pp. xxxiii-lxxxii.

⁴⁵ *Bracton and Azo*, pp. 124-6.

⁴⁶ Pp. 518-19.

⁴⁷ 'The rights of the king are conceived as differing from the rights of other men rather in degree than in kind. At the beginning of Edward I.'s reign, this is expressed by lawyers in their common saying, "The king is prerogative." As yet the term *prerogative* is hardly used except in this adjectival manner. It suggests to us that the king has the rights which are given to others by the ordinary law, substantive law or procedural law, but that we are likely to find that each particular right is intensified when it is the king's; the usual definition of it is exceeded, for the king is prerogative. . . . Prerogativity is exceptionality.'—*History of English Law*, i. 496-7.

⁴⁸ *Township and Borough*, p. 37.

⁴⁹ *Ibid.*, p. 51.

⁵⁰ See *Eng. Hist. Rev.*, xv. 120-4.

⁵¹ *Camb. Mod. Hist.*, ii. 565.

⁵² *Political Theories of the Middle Age*, p. xlii.

⁵³ *Roman Canon Law in the Church of England*, pp. 179 and 158.

⁵⁴ *Township and Borough*, p. 25.

⁵⁵ *English Law and the Renaissance*, p. 14; and *Roman Canon Law in the Church of England*, p. 94.

⁵⁶ *Defensor Pacis*, c. xii.: 'Nos autem dicamus secundum veritatem atque consilium Aristotelis . . . legislatorem seu causam legis effectivam primam et propriam esse populum, seu civium universitatem aut eius valentiorum partem, per suam electionem seu voluntatem in generali civium congregatione per sermonem expressam, præcipientem seu determinantem aliquid fieri vel omitti circa civiles actus humanos sub poena vel supplicio temporali: valentiorum inquam partem considerata quantitate in communitate illa super quam lex fertur, sive id

fecerit universitas prædicta civium aut eius pars valentior per se ipsam immediate, sive id alicui vel aliquibus commiserit faciendum, qui legislator simpliciter non sunt, nec esse possunt, secundum solum ad aliquid et quandoque ac secundum primi legislatoris auctoritatem.'

⁵⁷ *E.g.*, ' . . . Perspicuum fit duo imperii publici genera esse : alterum quidem summum legibus ac magistratuum imperio solutum, alterum legitimum, quod legibus obligatur : hoc magistratum proprium est, illud vero maiestatis.'—*De Republica*, iii. 5. Cf. 'Etenim lege, æquitate, legis actione et magistratus officio omnes ac imperia continentur ; lex ipsa ad legis actionem, æquitas ad magistratus officium refertur.'—iii. 5. 'Refert autem plurimum magistratus legibus teneatur necne, an vero legibus omnino solutus sit : quoniam in altero facti tantum, in altero iuris et æquitatis quæstio versatur ; quæ gravissima est si lex interpretatione violatur.'—vi. 6.

⁵⁸ See quotation on page 7 *supra*.

⁵⁹ 'The most wonderful of all palimpsests is the map of England, could we but decipher it.'—Maitland, *Archæological Review*, iv. 235, quoted by Round, *The Commune of London*, p. 1.

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